

ELEMENTARY AND SECONDARY EDUCATION ACT REAUTHORIZATION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON THE TITLES AND PROVISIONS IN THE DRAFT
REAUTHORIZATION FOR THE ELEMENTARY AND SECONDARY EDU-
CATION ACT

OCTOBER 27, 1999
WASHINGTON, DC



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CONTENTS

	Page
Statements:	
Beaulieu, David, director, Office of Indian Education, Department of Education, Washington, DC	3
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado, chairman, Committee on Indian Affairs	1
Charley, Wallace, council delegate, Shiprock, NM, vice chairman, Education Committee, Navajo Nation	16
Cheek, John, executive director, National Indian Education Association, Alexandria, VA	18
Corwin, Thomas, acting deputy assistant secretary, Elementary and Secondary Education, Department of Education, Washington, DC	3
Gish, John, president, National Indian Impacted School Association, Mahnomon, MN	19
Johnson, Judith, acting assistant secretary, Elementary and Secondary Education, Department of Education, Washington, DC	3
Kohlmoos, Jim, deputy assistant secretary, Office of Elementary and Secondary Education, Department of Education, Washington, DC	3
Tippeconnic, John, Education Policy Studies, Pennsylvania State University, College of Education, University Park, PA	21
Tortalita, Lloyd D., Governor, Pueblo of Acoma, Acoma Pueblo, NM	14
Wellstone, Hon. Paul, U.S. Senator from Minnesota	2

APPENDIX

Prepared statements:	
Akaka, Hon. Daniel K., U.S. Senator from Hawaii	30
American Indian Higher Education Consortium	247
Charley, Wallace (with attachments)	57
Cheek, John (with attachments)	77
Conrad, Hon. Kent, U.S. Senator from North Dakota	30
Gish, John (with attachments)	98
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, vice chairman, Committee on Indian Affairs	29
Johnson, Judith (with attachments)	31
McCoy, Melody, attorney, Native American Rights Fund (with attachments)	147
Tippeconnic, John (with attachments)	113
Tortalita, Lloyd D. (with attachments)	47
Wallace, A. Brian, chairman, Washoe Tribe of Nevada and California (with attachment)	250
Additional material submitted for the record:	
Gomez, Robert, superintendent, Gallup-McKinley County Public Schools, Gallup, NM, letter	255
Hale, Ronald, board president, Wide Ruins Community School, Chambers, AZ, memorandum	257

ELEMENTARY AND SECONDARY EDUCATION ACT REAUTHORIZATION

WEDNESDAY, OCTOBER 27, 1999

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 9:18 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, Wellstone, and Gorton.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Today we will receive testimony on the Indian titles and provisions in the draft reauthorization for the Elementary and Secondary Education Act [ESEA].

Because of its broad jurisdiction and the many problems facing Indian country, this committee hears from the tribes on many issues, including housing, health care, gaming, road construction, and a host of other things. Nothing, in my mind, is more critical to the health and welfare of native communities than education. Since the issue of Indian education was the subject of a special committee in the 1960's, there has been progress made; but as we all know, we have a long way to go. Indian youngsters have high dropout rates, substandard academic achievement, alcohol abuse, substance abuse problems, teen pregnancy, and a host of other problems that are holding native people back from getting the kind of education needed that today's market and world demand. As a former teacher myself and as the chairman of this committee I believe that, in the long run, education and particularly higher education holds the key to brighter futures for native people. I'll place the rest of my statement in the record but let me just go on to say that over the next couple of months we'll have the opportunity to scrutinize the bills that have been offered to reauthorize ESEA. My understanding is that Senator Jeffords, in his Health, Education, Labor and Pension Committee does not expect to mark up the bill until early January of next year. But with that, we'll move forward. Senator Inouye, did you have a statement?

Senator INOUE. Mr. Chairman, I do have a statement but may I ask that it be made a part of the record?

The CHAIRMAN. Without objection, it will be done.

[Prepared statement of Senator Inouye appears in appendix.]

The CHAIRMAN. Senator Wellstone.

STATEMENT OF HON. PAUL WELLSTONE, U.S. SENATOR FROM MINNESOTA

Senator WELLSTONE. Mr. Chairman, why don't we go on with the hearing? I do want you to know and Senator Inouye that I, as a member of the Health Committee, this is my background, and education, and will be very involved in this markup. I thought we were going to do it this fall, but you're right, we'll do it early next winter, and I look forward to working with my colleagues on this committee to make sure that we do much better when it comes to education for Native American people. I couldn't agree with you more that, I mean that all of us have, some of us have been the direct beneficiaries of this and certainly all of us believe in it, that education is certainly part of the foundation of opportunity in our country, and I think in Indian country all too often—just look at the physical condition of some of the schools and the fact that quite often you don't have the same qualified teachers, much less all the other kind of issues that young people have to deal with in their lives.

I think this is the place that I think we can make the biggest difference, so I appreciate this hearing today and thank you for your work.

The CHAIRMAN. We appreciate your input. Your background in education makes you very valuable to this committee, Senator Wellstone, and as you probably know, Indian schools—they don't get State aid; they don't get help from States; they are totally dependent on the Federal Government, particularly Bureau schools, and you've visited some of the them; I have, too, and they're pretty dilapidated, need a lot of help. Thank you.

Senator WELLSTONE. Thank you.

The CHAIRMAN. With that, we'll start with the first panel. That would be Judith Johnson, acting assistant secretary for Elementary and Secondary Education from the Department of Education, accompanied by Thomas Corwin, the acting deputy assistant secretary, Jim Kohlmoos, the deputy assistant secretary, and David Beaulieu, I believe that's pronounced right, director the office of Indian Education.

With that, Ms. Johnson, why don't you go ahead, please.

Ms. JOHNSON. Good morning.

The CHAIRMAN. Will you be making the only statement, or will your colleagues also be making statements?

Ms. JOHNSON. I will be making the formal statement, but they will join me in the question and answer part.

The CHAIRMAN. Fine.

STATEMENT OF JUDITH JOHNSON, ACTING ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION, DEPARTMENT OF EDUCATION, WASHINGTON, DC, ACCOMPANIED BY THOMAS CORWIN, ACTING DEPUTY ASSISTANT SECRETARY; JIM KOHLMOOS, DEPUTY ASSISTANT SECRETARY, OFFICE OF ELEMENTARY AND SECONDARY EDUCATION; AND DAVID BEAULIEU, DIRECTOR, OFFICE OF INDIAN EDUCATION

Ms. JOHNSON. Mr. Chairman, Mr. Vice Chairman, and members of the committee. Thank you very much for inviting me to talk today about the administration's proposal for the reauthorization of the Elementary and Secondary Education Act of 1965, an act that we refer to as ESEA. In particular, I'd like to provide comment on two areas: The broad principles that frame the reauthorization of ESEA and, in particular, the programs for American Indians, Native Hawaiians, and Alaskan Natives. My written statement has been submitted for the record.

The CHAIRMAN. Without objection that will be included.

Ms. JOHNSON. Thank you. My oral comments will provide a summary of that written statement. The themes in our reauthorization proposal are intended to continue the progress that our Nation's schools have already made in helping all students improve their academic performance. And we do that within our bill with a very specific emphasis on raising the level of achievement for our poor, minority, and educationally-disadvantaged students. Our proposal builds on the 1994 reauthorization that sought to ensure that all of our students, including American Indians, Native Hawaiians, and Alaskan Natives, were taught to higher standards and all of them were held to higher expectations. American Indians and Alaskan Natives have made progress in recent decades. As students they continue to disproportionately be affected by poverty, low educational attainment, and as a consequence, have fewer educational opportunities than other students. While we are dedicated in this administration to improving educational opportunities for all students, we are particularly committed to improving educational opportunities for our Native American students. To increase educational excellence and equity, the administration's ESEA proposal, submitted in May, has six broad principles that I would like to take a few minutes to define for you.

The first one is to continue the implementation of high standards in all of our classrooms. We made a major decision in the 1994 authorization to establish the notion of a standards-based reform agenda across the country. It has taken hold throughout the country. We now know that in 48 of our States content standards are in place. A number of States are working to complete the final requirements in the 1994 authorization. The task now is to get high standards into every classroom in this country.

The second major theme is to support positive learning environments by reducing class size in the early grades, with the goal of helping every child to read well and for comprehension by the end of the third grade, and to acquire the basic mathematical skills needed to be successful in their subsequent school years.

The third goal is one that we heard a great deal about as we traveled throughout the country collecting testimony for the prepa-

ration of the 1999 reauthorization proposal. And that was to strengthen the quality of our teaching force and our instructional leadership. So the third goal is to strengthen teacher and principal quality in all of our schools.

The fourth principle is to emphasize accountability for school and student performance, including a major emphasis on turning around failing schools and toughening accountability in Federal education programs. No child should need to attend, or be required to attend, a failing school.

The fifth principle is to provide safe, healthy, drug-free, and disciplined learning environments that improve the partnerships between students, teachers, families, and communities.

And our sixth principle and goal is to modernize our schools for the 21st century by putting useful, advanced technology in our classrooms, by making our schools more supportive and smaller for students, by increasing the opportunities for all of our students to learn foreign languages, and to expand the opportunities for learning by offering after-school, extended school, and summer programs for all of our children.

Each of these six goals supports State and local efforts that are aimed at improving the education for all students. We know that these themes will be of particular benefit to our Native American Indian students. Our proposal rejects the tyranny of low expectations a deeply flawed assumption. We hold, instead, the belief that all of our students can be taught to high standards. All of our students includes Indian students. We give them, and need to give them, through this proposal, the resources and the services they need to meet these high standards. Better trained teachers, smaller classes, schools that are drug-free and safe, new schools through our school construction bill, and strengthened accountability provisions will benefit all students as we constantly strive to make our schools and our education system the best in the world.

I'd like to move from the six principles and goals that frame the 1999 reauthorization proposal to the specifics of our proposals for Indian education, Native Hawaiian education, and Alaska Native education. Our reauthorization proposal for Indian education builds on the significant changes made in the previous authorization. We maintain the commitment to the Formula Grant Program, with its specific emphasis on improving the quality of instruction for Indian students. Additionally, our bill would maintain the flexible authorization for special programs for Indian children. Through this authority we have just completed two competitions for early childhood programs and professional development programs. Our proposal for an American Indian Teacher Corps to hire 1,000 new Indian teachers in schools with concentrations of Indian students would be operated under the professional development authority. We are very optimistic about the impact that this program can have on the quality and quantity of Indian teachers.

Finally, our bill would retain a broad national programs authority for research, development, evaluation, and data collection activities. Our proposal would also repeal several of the unfunded authorizations contained in the current statute. Allow me to address this for 1 minute. As we looked across the 14 current ESEA titles, we made some decisions to eliminate redundant or unfunded au-

thorities. Where the current legislation contains 14 titles, our new proposal contains 11 titles. Where we could find consolidations, we identified those consolidations. For example, in title IX, we shifted the gifted and talented authority into an allowable activity under the Formula Grant Program so as to provide benefits to as many Indian students as possible. I'd like to state very emphatically that we are not cutting back on any programs that are currently providing services to Indian students. It is important that we continue to ensure that our legislation supports a comprehensive effort to improve educational opportunities for Indians. Our reauthorization proposals for the Native Hawaiian and Alaska Native programs are intended to ease the administration of those programs. This allows us to encourage and support implementation of innovative educational strategies that are emerging from native educators in Hawaii and Alaska. For the Native Hawaiian program we propose to merge the seven authorities into one comprehensive authority. That gives the Department the flexibility to fund creative, cross-cutting, innovative approaches to meeting the education and cultural needs of our Native Hawaiian students. Similarly, for the Alaska Native program we propose to merge three authorities into one comprehensive authority.

I would like to emphasize the administration's opposition to the House Committee's action to repeal the Native Hawaiian program. This action fails to consider the unique educational and culturally related needs of the Native Hawaiian population. These are the very needs that these programs are intended to address. There is a special relationship that our country has with the Native Hawaiian population. I was pleased to see that Senator Inouye and Senator Akaka recently introduced their Native Hawaiian Education Reauthorization Act. It largely mirrors our proposal for reauthorization. It is encouraging that we have reached such agreement on this important program, and I believe it should be easy to work out the few differences that exist.

Finally, I would point out that our reauthorization proposal is not the only effort we are making to improve educational opportunities for Indian students. On August 6, 1998, President Clinton signed Executive Order 13096, which cited the importance of improving educational achievement and academic progress for American Indian and Alaska Native students and for reaching the goal of preparing every student for responsible citizenship, continued learning, and productive employment. This Executive order is an important step forward in addressing systemic and long-standing difficulties in meeting the unique needs of our American Indian and Alaska Native students. Through the Executive order a comprehensive Federal Indian education policy will be established that can and will set the stage for important discussions surrounding the programs and services that we provide to American Indian and Alaska Native students. It will have a positive impact on the educational achievement and the academic opportunities available to them.

In closing, I would like to thank you for the opportunity to appear before the committee. I look forward to engaging in a discussion with you around the reauthorization proposal, and my colleagues and I look forward to answering any questions you may

have about the reauthorization proposal and, in particular, about title IX. Thank you.

[Prepared statement of Ms. Johnson appears in appendix.]

The CHAIRMAN. Thank you, Ms. Johnson. Let me ask you a couple of things.

You spoke about these different principles that you're now pursuing and one, you mentioned you will be taking testimony from the Indian community. I'm a little concerned about lack of good, solid information, measurable type information on student performance, faculty evaluation, standards, just to name a few. Will the research agenda of your office require program funds for the purposes of research to find out these things, or are you going to need additional funds?

Ms. JOHNSON. We now have the capacity to begin to explore and to engage in research on a much greater level than we've had in the past, but I'd like David to respond to that also.

Mr. BEAULIEU. Mr. Chairman.

The CHAIRMAN. Please identify yourself please for the record.

Mr. BEAULIEU. David Beaulieu, Director of the Office of Indian Education. We currently have money within our national programs account for research, and we have requested an additional \$1 million for a total of \$1,735,000 to focus on research. The Executive order on American Indian education asked us to look at three major areas for research. One, establishing baseline data so that we actually have good solid information on how well we're doing nationally with regard to our efforts to improve Indian education. Second, to look at those practices, to understand exactly what is working and what is not working and to understand the reasons why and to inform practitioners about that kind of information. And then last to look at the impact of native language and culture in Indian education. As a response to that activity we have developed a research strategy within the Department to begin to focus on how we are to meet those objectives. We, for example, are proposing the development of a national Indian educational research conference, to bring practitioners and researchers together to talk about specifically the kinds of questions we need to ask and to focus on Indian student needs. We'll have topic groups and others to begin to do that more fully.

The CHAIRMAN. Well, Ms. Johnson, I laud your plan on trying to recruit and deploy 1,000 Indian teachers. Good luck, it's a long-range goal because I don't think there are 1,000 available Indian teachers, very frankly, but I support that idea. One of the problems I believe we've had in Indian schools, particularly the on-reservation ones, is that the youngsters kind of get caught between two cultures. You know, there's a traditional way of teaching in the Indian communities, you probably know. The traditional way, of course, before there were schools it was done by the grandfathers, the uncles, if it was a young boy, and the grandmothers and the aunts if it was a girl, and many things I've noticed being a former teacher myself as Senator Wellstone has, is that some of things that are taught are often in conflict with the traditional way of believing. The traditional way, of course, was through a holistic method of teaching where art and dance and music, religion, and all the other things were all part of learning. They weren't separated or

categorized like they are in the public school system and complicated with different laws about what you can or can't do. I think sometimes in the past when teachers have come out on the reservations, non-Indian teachers, they brought a different set of values, and many of them try very hard I think, but I know having been out there a lot of times there is a big disparity sometimes between what they're teaching youngsters and what the kids go home and are then told by their grandparents, and it creates a tremendous amount of confusion for the kids. I think, although I don't know for sure, but I would think that teachers who happen to be Indian or who are Indian would understand that very delicate kind of balance between the styles of teaching and being able to do maybe a better job and certainly to try to reduce the dropout rate. But I just wanted to wish you luck on that and I hope that works—finding 1,000 new teachers.

Ms. JOHNSON. Let me comment a bit on that. I've been with the administration for 2 years, but I'm a 30-year educator having spent of most career in New York State, starting as a classroom teacher and working my way up to district administration, so there are a number of thoughts I have in response to the comment you just made.

If it is difficult to find 1,000 teachers, we need to work a little harder to identify them. We need to start with the pipeline and encourage our Indian students to think about teaching as a career so that we can fill that pipeline up.

On the cultural insensitivity that you feel some teachers bring to the classroom, that's what I heard you say and I've seen that and experienced it. That's simply unacceptable in a country where in the next millennium we will have the most diverse student population ever. So teachers will need to acquire a cultural sensitivity and understanding about how you use the environment that a child comes from, how to use that as a launching point for introducing the academic language of the classroom. A really effective teacher uses both the academic language of the classroom and the cultural language of the student to ensure that there is success in classroom. So we are hoping that as we work with the universities to revamp our teacher education programs, they understand the importance of ensuring that our teachers are trained to be culturally sensitive to our diverse population.

The CHAIRMAN. Well, I appreciate that answer. You also did, as I understood your testimony, you mentioned the importance of language, too, and certainly Indian languages being lost with the exception of a few of the big tribes. You can go out on reservations now or even 15 years ago and almost any youngster that's under 20 could speak their own language because they were taught by the elders and it's being lost. I would hope that in your agenda somewhere there's also an emphasis on trying to retain those old languages before they're all gone. They're disappearing. I mean almost daily they are disappearing, as you probably know.

Ms. JOHNSON. Do you want us to comment on that?

We do have a response to that.

Mr. BEAULIEU. Senator and members of the committee, David Beaulieu.

Yes, we are concerned. Our program particularly recognizes unique educational and culturally-related needs of American Indian students, Alaska Native students, and of course, one of those unique needs is, in fact, language. The program seeks not only to enable educational environments to be congruent with Indian students' language and culture, it seeks as a possibility that the schools address specifically the language development needs of Indian students.

The CHAIRMAN. Well, Ms. Johnson's testimony did state that consistent with general Administration policy, several unfunded generally duplicative authorizations would be repealed, and I am wondering what specific Indian programs are slated for elimination or repeal?

Ms. JOHNSON. Why don't I take you through the four that have been proposed for repeal and identify for you how the needs and intent of those statutes are still going to be retained?

The first one is gifted and talented. Our current proposal would repeal the separate program and make gifted and talented programs an allowable activity under the larger LEA Formula Grant. We feel that incorporating gifted and talented programs into the larger formula programs would provide greater opportunities for Indians to participate in gifted and talented programs. So we identified an existing source—both a legislative source and a fiscal source—for gifted and talented programs.

The next one—there are four—the second one is Fellowships for Indian Students. We have decided that our students would be better served if we focused our efforts on building capacity of colleges and universities to provide support for Indian students, instead of funding the individuals specifically. So this is a move away from individual fellowships to supporting the capacity of colleges and universities to provide support for all of our Indian students. It would also allow us to create an Indian teacher core. This strategy builds institutional capacity. Instead of providing funds only to individual students and hoping that the colleges will provide the support services and other activities needed to help those students succeed, we believe that it is appropriate to help the institutions provide both the student support and the additional services.

The third area where we are proposing a repeal is grants to tribes for educational administrative planning and development. We do that because there is a comparable authority within the Bureau of Indian Affairs [BIA]. We are reviewing this area and in the future may wish to provide funding for it, but we don't need redundant authorities in order to support the tribal departments of education.

And the fourth one is the special programs related to adult education for Indians. Our proposal eliminates authorities that have not been used or are redundant with other existing authorities, but it does retain the authorizations for improving educational opportunities for Indian children and professional development. The improvement of educational opportunities section allows for a significant number of projects to improve the educational opportunities and achievement of Indian children. The professional development section allows for pre-service and in-service training in professions that serve American Indian people, including the educationally-re-

lated professions. The professional development programs can meet some of the post-secondary and graduate level training needs for American Indians. The authority, unlike the fellowship program, qualifies an institution rather than an individual, so it's our feeling that this program approach provides the greatest student support possibilities and increases the potential for success for our students.

So those are the four areas that have been recommended for repeal, but in each instance we've identified an existing authority that would be able to cover the same series of activities.

The CHAIRMAN. Well, I certainly hope that you've identified a very strong program that can cover that because those all seem to be pretty important areas, particularly adult education. Senator Inouye and I have both spent a lot of time visiting reservations and the adult education program in the little Indian community colleges, for instance, is extremely important. There is a much bigger percent of people who have started a family and then want to come back to school under some adult education program on the reservation and off the reservations. Without those existing adult education programs that are being administered there simply wouldn't be an opportunity for many of those people who are non-traditional types of students; that is, they didn't finish school or get a GED, and they want to come back as adults. They simply wouldn't be able to, without some adult education programs, so I hope you move along very carefully on that and make sure that there are not only adequate resources but a real commitment to take up the slack by the other agencies that you think will be able to service the communities.

Ms. JOHNSON. It is also our hope that the eligible tribes and tribal entities will apply directly to the States for the funds that are made available under the Adult Education Act. We know that there were several entities currently receiving funds under that act.

The CHAIRMAN. Those funds were available but I can tell you for sure that it's like pulling teeth to get the States to send any money to those Indian schools. States generally think it's a Federal responsibility, our responsibility here, and they are very reluctant to do it. It's very difficult to get State money onto the reservation for tribal schools.

Mr. CORWIN. Could I add a little on that? I'm Thomas Corwin. We agree with you completely and I think, in fact, the history in the adult education State program has been that most of the money went to the local school districts—that is who the States were most comfortable with. That made not just the Indian entities but community-based organizations, community colleges, and others, kind of unhappy because they had a lot to offer in adult education. They got the law changed back in about 1991 so that the States can no longer just do it the old way; they now have to give everybody equitable access, take the best applications and give the money to the neediest areas. We've seen some progress on that but I think, like you say, we need to keep working with the States so they understand what they should be doing here.

The CHAIRMAN. I know that even little schools, those 2-year colleges, for instance, even the ones that get accredited by the State so that they can transfer to units from that school to one of the

State universities or colleges, even they have difficulty getting their fair share of any grant money.

Ms. Johnson, just one last question before I ask Senator Inouye for some comments and that is one of the problems that the Indian schools face is that they have inadequate resources. I've visited a lot of them. They have broken down computers and the type of equipment, is just not state-of-the-art technology that you would find in most outside schools. Is the administration making any proposal, even in a pilot project, that would bring things like Internet or library services or access to speakers' bureaus, something of that nature, online so that they could use that or any other high tech tools that normal schools now have a pipeline into?

Ms. JOHNSON. I agree with you that it's deplorable.

The CHAIRMAN. These schools, many times, are hundreds of miles from a metropolitan area, and in some places they're even 100 miles from the nearest town. And so the isolation alone of some of the Indian schools makes it much more difficult to get the same kind of high technology instruction that people can avail themselves of in a bigger community.

Mr. KOHLMOS. Mr. Chairman, I'm Jim Kohlmoos from the Department of Education. On this whole issue of technology and distance learning and gaining access to the Internet, particularly for Indian schools, and schools funded by the BIA, the BIA has launched a rather aggressive effort to wire schools through this Net Day concept. They've now conducted two Net Days and you might want to ask our friends from the BIA, in the education office there, about what they've been doing. I've participated in one in particular at a Pueblo in New Mexico. It was very very impressive what they've been able to do even in a small Bureau-funded school in the middle of New Mexico. When you were talking earlier about this effort to kids living in two worlds, well, technology allows that migration back and forth in a very effective fashion between the traditional world and the modern, 21st century world. I think we all agree that technology provides a vehicle for building that bridge. Thank you.

The CHAIRMAN. Senator Inouye, did you have questions or comments?

Senator INOUE. Yes; thank you very much.

Ms. Johnson, I appreciate your statement. As you may know, I've been on this committee now for about three decades, and during that time I've heard your predecessors provide us with statements of great promise and hope, but in every event we have found that these promises come to naught because of the lack of funding. Here we have received a statement that suggests certain programs should be eliminated because of no funding. That reminds me of a program, which is not in your jurisdiction, tribal colleges. The authorization that we hopefully passed would authorize \$6,000 per Indian student in tribal colleges. The highest we have ever been able to do is \$2,900. That's the highest we have ever achieved. It's usually less than \$2,000. The question here is should we repeal that law and just be realistic and say "we'll give you \$3,000 per capita" because since its inception we have never gone up to \$6,000 and yet we will agree that these colleges are important. Second, as the chairman indicated, there are a lot of funds available through

our States, but for one reason or another they are not made available to Indian nations. For example, under the provision of Federal law, I believe it's 20 U.S.C. somewhere, in fact, eight States need not allocate these funds to all educational activities and in some cases they just cut out certain educational activities. And it just happens that most of them are Indians. So here we have a Federal program, Impact Aid, that is supposed to be distributed to all the school children, but because of certain provisions in the law, very cleverly the States can say, "Yes, we'll use it here, but not there." And "there" is usually an Indian reservation. Now would the Administration be in favor of repealing this law that would authorize States to reduce its funding through schools that educate Indian children?

Ms. JOHNSON. I would like to take part of that question, and then ask Tom Corwin to take the Impact Aid piece.

You started by saying that each of my predecessors offered great promises that appear not to have been met. And I think I mentioned in my opening comments that we can't afford to leave one child behind; that this 1994 legislation put us on the slate and on the radar screen as saying that every child needed to make academic success.

We have become a lot more research based and data driven, so we do look at data to see whether all of our populations are doing well and we do look at the data around our Indian children to see whether or not they are performing well.

In preparing for this testimony, I too was curious about the dollar allocations and the funding sources available to support American Indian children. And they come in two categories. There are direct supports through the funds that we provide, particularly in money that is transferred to the BIA, and there are also indirect supports. You know 90 percent of our Indian children are in public schools and many, an overwhelmingly disproportionate number as a matter of fact, are eligible for free and reduced lunch. That makes them generate funding for all of the programs that target poverty children in our ESEA. And we are really dedicated and seeking to insure that as schools look at improving student achievement, they tease out or disaggregate their data so they can take a look at the success of American Indian children. So, while I won't go through the litany of all the funds available, I did want, very much to make sure that I could say to you today that we do have title I funds supporting our Indian children. We do have technology funds supporting our Indian children, and we also have funds that go directly to the BIA.

Now, on the Impact Aid issue, I would like Tom Corwin, who really knows this extremely well, to try to answer that question for you.

Senator INOUE. Before we go there, I concur with you fully. I think for the most part in Indian country, funding is from the Federal Government. We have funds available through the States, which we assume would be used for all children in their jurisdiction, but it doesn't happen. So, it may be available, and the children may be eligible, but that's just in the law, there are no funds for them.

Mr. CORWIN. I would also add a little to what Ms. Johnson said about the funding. We have stood with the Indian education program over these years. As you may recall, in 1995, we almost lost all the funds. We had a recommendation from the House Appropriations Committee to cut it down to \$1 million, as a 1-year phase out, and we worked hand in hand with the National Indian Education Association to turn that around. We were successful, but at a loss of quite a bit of the appropriation that we have been trying to restore since then.

The Chairman mentioned the Indian Teacher Corps proposal and the research on Indian education. We have strong recommendations for funding them in Fiscal 2000, and the Senate was good enough to put them in their bill. The House didn't, so we are still struggling on that one, but we agree with you: We would like to make these promises with some confidence that the money is going to be there, but you can't always depend on it.

With regard to the Impact Aid program, there is the provision, generally, that the States cannot back the money out from their own formulas to account for the Impact Aid money that is coming into the school districts.

There is one loophole there, and we agree that there are some problems with it. The loophole occurs when the State is considered equalized under the law, meaning that it meets the tests for insuring that all its school districts, whatever their property wealth, can provide roughly equal education measured in per student funding. Then, the State can back that money out. I guess the feeling of the Congress was, if you didn't allow that, you would interfere with State equalization.

The problem in some States is that the basic level is very low. I think you have compelling testimony coming up on that later this morning from some school districts where they may be equalized but they are operating at a very low level and cannot provide an effective education. We agree with that. We wouldn't say, "throw out the whole thing." We have provisions in our bill to require them to be funding education at at least 80 percent of the national level per-person expenditure. And we strongly hope that the Congress will accept those recommendations because we agree with you, it is a problem.

Senator INOUE. The other matter that concerns me, whenever I see the words, "consolidate" or "to merge," is usually followed by a rather drastic cut in funding. "Brings about efficiency," those are terms used. I would hope that we keep in mind that over the years for one reason or another, we have not fully lived up to the obligations we have on the treaties and under the law. It is one thing to say we are going to do it; another thing to say there are loopholes in the law.

A few moments ago, while you were sitting there waiting to testify, we had an executive session to mark up a bill. It was a bill to provide among other things, contract support costs. As a matter of policy, the government of the United States decided that it would be better for all entities concerned if Indian country assumed these responsibilities of governance; self-determination, self-government. And so we told Indian country, "you do that, and we will provide you with necessary funds to hire nurses, hire doctors, et

cetera, et cetera." Now, we have a situation, where this is going to be up to the Congress of the United States. Yes, we made a promise that you take over the reins, we'll supply you with money, but, then it has to come through appropriations, which may come down to nothing, and therefore we wanted to make it a sort of entitlement. Would you be in favor of considering education as an entitlement program for Indian country?

Ms. JOHNSON. I think that public education is the civil right of every child in this country. I think all of our children are entitled to an efficient, effective, high quality educational experience. I think that that has to be done as part of a partnership, with the Federal Government, States, and local districts, because as we all know the authority for establishing educational systems really does reside at the State and local level. But it is a civil right. And it is one that we must keep in mind.

I want to respond to the concern you have about the possible loss in funding. I want to reassure you that, as one of the senior officials that helped to construct the ESEA proposal, we always had before ourselves a set of questions as we looked at the areas that we were going to recommend for possible repeal. And there was one very important question: Was this service and or activity available elsewhere, and were the funds available to support it? If the answer was yes, then we decided to eliminate something that was redundant, but we under no circumstances, in any instance, eliminated or recommended for repeal a program that could not be supported in some other area. So, it was an attempt to be efficient, an attempt to use our funds well, and an attempt to assure Congress that we understood the importance of using our funds around a common or shared mission, and that we could take on the task ourselves, of assuring that we were looking for evidences of redundancy, and where we found them we would eliminate them, but we did not in any way reduce the funding available in any of these programs.

Senator INOUE. Ms. Johnson, you can count on my help. I will do everything I can to help you in your program. I join you in my commitment to your six programs, because they are very essential, not just to Indians but to all children in this land. So, I commend you for the effort you are making. But, I hope you will understand, it is frustrating sitting here, year after year, but I hope that this may be the step that we will finally take.

Ms. JOHNSON. We think that we have to win this. We are entering a new millennium. We cannot leave a child behind. We feel that we have put the right principles in place, we have developed a budget that we think is honorable, and we are really going to stand tall and fast on this one.

Senator INOUE. Thank you very much.

Ms. JOHNSON. Thank you.

The CHAIRMAN. Thank you, Ms. Johnson. I think this is the first time that you have appeared before this committee, isn't it?

Ms. JOHNSON. Yes; it is.

The CHAIRMAN. Well, all good actions start with a good heart and I want to tell you that I think your commitment, and understanding, and empathy, for the problems we have in Indian country for our children are real and sincere and I really appreciate your help,

as Senator Inouye does. I don't know what your schedule is, but we are finished with this panel. We will be going on to the next panel, but if any of the four of you have the time to stay, you might be interested in what the next panel is going to say, because I know we are going to have some very interesting points. So with that, thank you very much.

Ms. JOHNSON. Thank you very much, and my colleagues will be staying.

The CHAIRMAN. With that, we will go to the next panel which will be: Lloyd Tortalita, Governor of the Pueblo of Acoma; Wallace Charley, council delegate from the Navajo Nation; John Cheek, executive director of the National Indian Education Association; Brent Gish, the president of the National Indian Impacted School Association, John Tippeconnic, from the Educational Policies Studies, Pennsylvania State University.

When we do our panels in front of this committee, I might tell you that we give a little more latitude to administration panels in terms of time, but since we do have limited time, we do ask other panels if they would limit their time. And we remind them with this little clock up there, so you have about 7 minutes to condense your verbal testimony. All of your written testimony will be introduced in the record.

Mr. Tortalita.

STATEMENT OF LLOYD D. TORTALITA, GOVERNOR, PUEBLO OF ACOMA, ACOMA PUEBLO, NM

Mr. TORTALITA. [Remarks given in native tongue.]

Thank you Mr. Chairman. Good morning again. My name is Governor Lloyd Tortalita. I am from Pueblo of Acoma, and I want to make sure that the committee understands and knows who I am.

It's good to be coming before the committee. I am Governor of Pueblo of Acoma and I will let you know that I have served 6 years on the Head Start program at my local schools as the parent-policy-council-chairman, so I do know Head Start. I served 8 years, no 9 years, on the local BIA operating school boards. I served 8 years on the local public school board. Also, I am on leave from my job at the Johnson O'Malley Higher Education and Adult Education Program Director for my tribe.

My testimony is going to be based on Impact Aid, around Impact Aid. As we all know, 90 percent of our Native American Students attend public schools. About 2 percent attend parochial schools and private schools. Anywhere from 6 to 8 percent attend BIA operated schools. Pueblo of Acoma has both public schools, and we have a BIA operated school on our reservation. My council, and I as the Governor, support both schools. But having recently served as a public school board member, I am a bit concerned on how Impact Aid is distributed in the State of New Mexico.

Currently, and in the past, 95 percent of the Impact Aid was taken credit by the State of New Mexico, and was shared among 88 school districts, there are 89 school districts in the State of New Mexico. Five percent of it came to our local public schools in itself; 95 percent, the State took credit for. Eighty-eight school districts shared the Impact Aid dollars that came into the State of New Mexico. One school district, Los Alamos School District, kept 100

percent of the Impact Aid money. I can never understand why Los Alamos students were better than the Acoma students or any of the Native American students in Acoma. But Los Alamos is a heavily impacted Department of Defense area. A lot of our concern, and my concern is this: 95 percent goes into general operating funds. The leadership in the community was discussing school construction going through the process of building a new high school. We don't have funds to build a new high school. The current high school we have was built in the early 1960's, and was built as a middle school. But we were overcrowded and we were forced to put our high school students in it. And currently it is about 90 percent Laguna and Acoma students, and 10 percent of non-Indians in the school district.

But the situation of not having other Impact Aid in the 815 construction moneys available any more, we are having a problem of trying to construct a new school. We are trying to address that portion, and a lot of those dollars are going into general funding; and "general" transportation and general education should be taken care of by the State of New Mexico.

And we believe that we also need to have adequate safe schools like the Bureau of Indian Affairs schools for our native Indian American students that are attending public schools.

Currently, in 1999, the State has allowed us to take 20 percent extra credit now for Impact Aid. So right now the current split of 75 percent still goes to the State, 25 percent comes to the local school district. We are still asking for 100 percent of it.

And talking about equality, the equality of how this operates, I already mentioned Los Alamos school district, where they take 100 percent of Impact Aid. And currently 33 school districts are very heavily impacted by Impact Aid.

Currently there is a lawsuit in place in the State of New Mexico, which involves Zuni public schools, Gallup/McKinley County schools, and Cibola County schools, which I am a part of. And the reason for that is because, over school construction moneys, and over equality. But we need to cut, or allow the school districts that are heavily impacted to take, and get all the dollars that they can to help us educate our young Indian students in our school districts.

Let me give you an example, in the city of Albuquerque, Albuquerque public schools, they are bonded to only about 13 percent capacity, while the schools districts, Cibola County schools, Gallup/McKinley County schools, are bonded to 100 percent capacity. We don't have any other means of raising dollars and when these Impact dollars are taken away from us, we cannot adequately do what we should be doing.

And I wish everybody could come out to the State of New Mexico, come to the school district of Zuni public schools, come to the Gallup/McKinley public schools, come to Cibola County schools, and look at the facilities that we house our young individual Native American Acoma and Laguna students in. It is a shame that we do this to our own young people. I wouldn't want to go to school. I went to a public school in Albuquerque; but I've had to, because of no other choice, send my students to attend Grants public schools.

And we have proposed that section 8009 be eliminated from the next, or the reauthorization, because it will eliminate the problem that we are having with equality because it only affects three States now; only Alaska, Kansas, and New Mexico take credit for Impact Aid dollars. All the other States here in the United States do not take credit, they give 100 percent to their school districts. And this will allow us to close up some of the loopholes that are there.

Earlier, there was mentioned of bilingual education. And I also, make the committee aware that that, it has been mentioned that Johnson-O'Malley and title IX moneys provide duplicate services. It is not true in the State of New Mexico because a lot of our Johnson-O'Malley dollars are expended at the local level, and most of our schools are anywhere from 18 miles, to at least 75 miles away from the local public schools.

Title IX moneys are utilized within the school settings, within the school buildings, within the school districts. We need to make that known, because like I said, 90 percent of Native American students go to the public schools.

Also, currently in the State of New Mexico, we are going through compact negotiations. Pueblo of Acoma has laid on the table, a arrangement that 25 percent go to local government entities, and the local government entities that Acoma is talking about is our local public schools, which will help us come up with a new high school for our local Pueblo.

Any further questions later on, I will be glad to answer. I would like to take this opportunity to thank you for allowing me to come before you, because I have always been told as a JOM director, as an education director; but I am just a director, and I come here as I have been told that only Congress will listen to tribal leaders. So now I come before you as a tribal leader and hope my words are taken, are taken very seriously, and my written testimony has been provided to you. Thank you for giving me the opportunity to testify.

[Prepared statement of Mr. Tortalita appears in appendix.]

The CHAIRMAN. We appreciate your being here. It is unfortunate that only some Congress listen to your concerns.

Mr. TORTALITA. Thank you.

The CHAIRMAN. We will go on to Wallace Charley.

**STATEMENT OF WALLACE CHARLEY, COUNCIL DELEGATE,
SHIPROCK, NM, VICE CHAIRMAN, EDUCATION COMMITTEE,
NAVAJO NATION**

Mr. CHARLEY. Good morning, Mr. Chairman, honorable members of the Senate Indian Affairs Committee. My name is Wallace Charley. I am a member of the Navajo tribal council, serving as the vice chairman of the Education Committee, and recently have, also, served on New Mexico's State legislature as State Representative, also served on their education committee.

Mr. Chairman, honorable members of the Senate Indian Affairs Committee, the Navajo Nation appreciates this opportunity to testify under Title 20, Subchapter VIII, Impact Aid and Title IX, of the Elementary and Secondary Education Act of 1965.

Mr. Chairman, the Navajo Nation has submitted the written testimony, and I would like to mention that, for the record, the Navajo

Nation would like to recommend the repeal of Impact Aid, 20 U.S.C., subsection 7701. This allows States to take credit for Federal Impact Aid funds, reduce State financial aid to the local education agencies on the basis of receiptance of Impact Aid funds from the Federal Government.

Members of the committee, this provision has made Navajo schools to face economic hardship, of not providing adequate facilities and educational services to Navajo students. Currently, the State of Arizona has ceased its retention of Impact Aid, since the middle 1990's, when the local educational agencies serving the Navajo Nation challenged the State of Arizona's equalization formula. The State of New Mexico continues to create a negative impact to providing effective educational services. For example, the Gallup/McKinley County school district in Western New Mexico, which covers 5,000 square miles and is the largest district in the continental United States, with the enrollment of 15,000 students of which 75 percent are Native Americans and 15 percent Hispanic. Of the total enrollment of the students, 55 percent of the students are Navajos, who live on the Navajo Nation.

In the 1996-97 school year, the Gallup/McKinley County district was eligible to receive 18.9 million dollars of Impact Aid basic support funds. But, including the equalization formula levels in the State of New Mexico, the school district only received \$948,000 of basic support funds. The negative effects impact the welfare of Navajo students who are intended to be the beneficiaries of the Impact Aid, which they generate. Navajo students in Gallup/McKinley County schools in New Mexico, on a daily basis, go to school, now in the old dilapidated school facilities, which the school district simply cannot afford to replace, renovate, or even adequately maintain. Our Navajo students spend their days in classrooms contained in 225 portable buildings, while in surrounding communities, the students enjoy more modern facilities.

The supposed equalization of revenue expenditure set forth in Impact Aid, implemented in the State of New Mexico, has never resulted in the true equalization of revenue or expenditure for Navajo students, and continues to deny Navajo students equity in educational facilities and services. In this great country of ours, members of the committee, across the United States, average per pupil expenditures are approximately \$6,100, but in this same amount, New Mexico school district is less than \$3,500.

In regards to Title IX of the Elementary and Secondary Act of 1965, the Navajo Nation is at a critical juncture in development of the educational system within Navajo Indian country. The growth of tribally controlled contract or Grant school system within the Navajo Nation, as well as at the State level, including the establishment of charter schools in the State of Arizona. The Navajo Nation is supportive of the maintenance of all currently authorized programs set forth in title IX, of ESEA.

While some of the programs continue in title IX, they have not fully been funded, including provision relative to the establishment of tribal departments of education. The purpose and objective set forth in these programs continue to be very important in the deliver of education and education related services to Navajos.

Mr. Chairman, members of the committee, the Navajo Nation is pleased to see that the draft of the proposed Senate version of title IX reauthorization legislation maintains the existing programs with Indian education. The Navajo Nation has provided several recommendations to title IX.

Mr. Chairman, thank you for this opportunity to provide this testimony to this committee. The Navajo Nation appreciates its participation in the legislative process on getting it to a government-to-government basis and will continue to monitor and address the ESEA amendments, as the legislations are considered in both Houses of Congress. Thank you, Mr. Chairman.

[Prepared statement of Mr. Charley appears in appendix.]

The CHAIRMAN. Thank you for your testimony.

We will next hear from Mr. John Cheek.

STATEMENT OF JOHN CHEEK, EXECUTIVE DIRECTOR, NATIONAL INDIAN EDUCATION ASSOCIATION, ALEXANDRIA, VA

Mr. CHEEK. Good morning Mr. Chairman, Vice Chairman Inouye. On behalf of the National Indian Education Association, I would like to thank you for the opportunity to present testimony on the reauthorization of the Elementary and Secondary Education Act, specifically title IX.

I am a member of the Muscogee Creek Nation from Oklahoma and I have been involved in Indian education for about 20 years. I have had the distinct opportunity of working with almost every sub-part program within title IX over the past few years and have even been an adult education instructor, so I know what impact that these programs can have.

NIEA fully supports retaining all existing authorizations under title IX. We feel that the need to eliminate these authorizations is really a step backward. I know that Assistant Secretary Judith Johnson mentioned that, "we cannot afford to leave one child behind." I think the move to eliminate these programs would unfortunately do that, and also would leave behind many Indian adults.

NIEA just held its 30th annual convention last week in Oklahoma City, and at that convention we did pass a resolution in support of retaining all existing authorizations under title IX.

Also I wanted to mention to Senator Inouye that the membership did approve an amendment to our constitution that would allow Native Hawaiians to be general voting members of NIEA, in line, in equal with American Indians and Alaska Natives in this country.

So, welcome aboard as an official indigenous population, at least in NIEA's perspective. As far as we know, this is the first organization that has actually taken this first step forward, and we look forward to working with the Native Hawaiians on different issues.

In regards to some of the other items, H.R. 2, that is being administered through the House right now, also eliminates title IX authorizations. We feel this is not the right move. I used to work with the National Advisory Council on Education, which is a presidentially appointed commission. We had the opportunity to review applications that would come in for funding under that authority, and in any given year there would be approximately 5,000-10,000 adult Indians participating in that program. The last year for fund-

ing for adult education was 1995, and during that same time period, funding within the BIA for Adult Education was cut in half. So, we are not really sure how Indian adults are being able to take adult education programs. We know that there is less than one-half the amount of money available now than there was even 5 and 6 years ago. So, we feel that Indian education really needs to remain intact. The title IX program really was based out of the 1968-69 Senate report that Senator Bobby Kennedy did. He conducted a nationwide review of the educational status of American Indians and Alaska Natives in this country. What he found was pretty deplorable. Dropout rates of 100 percent were pretty common across the Nation, especially in reservation areas. Title IX was an answer to this problem, in the country and in Indian country, specifically. We feel that title IX really, exemplifies the government to government relationship with the Federal Government. And to see parts of it being eliminated and cut, really, I am taking it personally, I guess, because I worked on so many of the programs and I see all of the benefits that it can do with people at the local level. And I'm not sure how many of the previous panel have actually worked in the Indian country with some of these programs but I have, and I know the benefits that they can bring to Indian communities, so I would urge the committee's support in keeping these programs intact.

With that, I can't really think of much more to reiterate other than we feel that these programs need to remain a part of the Indian Education Act. Saying that the States could probably assume some of the responsibilities, I think, is thinking in the wrong direction. American Indians, regardless of whether they are at the reservation setting or in public schools have a Federal or government to government relationship with the Federal Government, and these programs really exemplify that, so if they are going to be cut, we just don't think that that is the right avenue to take at this point in time. And I would also mention that in 1997, the appropriations for Title IX used to fall, or prior to 1979, funding authority for the Office of Indian Education was held within the Interior Appropriations Bill. It is now under the Labor Health and Human Services Appropriations line item. And since then, it seems that the programs that we care most about are the ones that are really being affected. So, I am not sure if that has a basis on the reauthorization of the funding levels for these programs, but I would just caution that we cannot move toward into the next century with one adult or one Indian child left behind.

So, with that I would just, I think, go ahead and close my comments and I would be happy to answer any questions the committee might have. Thank you.

[Prepared statement of Mr. Cheek appears in appendix.]

The CHAIRMAN. We will have some questions. Thank you.

Mr. Gish.

STATEMENT OF BRENT GISH, PRESIDENT, NATIONAL INDIAN IMPACTED SCHOOL ASSOCIATION, MAHNOMEN, MN

Mr. GISH. Mr. Chairman, members of the Senate Committee on Indian Affairs, thank you for this opportunity to come before you. My name is Brent Gish. I am an enrolled member of the White Earth Band of the Minnesota Chippewa Tribe and have served on

the tribal council as well. For the past 27 years, I have served as a public school educator. I have served as an elementary teacher, as an elementary principal and am currently the superintendent of schools in Mahanomen school district. Mahanomen is a typical public school in Minnesota, which receives Federal Impact Aid. The Impact Aid is generated by the Federal presence on our tribal and trust property. Those dollars go to provide basic programs and staff members for the programs that we provide in our school system from birth to adult; from early childhood to community education, very very basic programs. The National Impacted Schools Association is an association, which represents over 700 schools nationwide. It serves the students that reside on over nearly 100 million acres of land that is tribal in trust as well as Native Alaskan lands. As it has been pointed out already, we serve nearly 90 percent of American Indian students in this Nation. Indian impacted schools generate over 300 million in Impacted Aid, and on this committee, on this Senate committee, over \$330 million go to the States that each of you represent.

My comments would be in the area of both the Impact Aid, as well as construction. We, the National Association of Indian Impacted Schools, as well as the National Association of Federally Impacted Schools, which would bring in military schools as well, do not believe that the current law is broken. But we do believe that it needs to be fine-tuned. As is already been cited by Mr. Tortalita and Mr. Charley, there are areas in which there are gross inequities.

I would speak to first the area of equalization. We support their efforts to eliminate that portion of the law. Currently, only three States, this has all already been cited, only three States exercise that opportunity. Alaska, New Mexico, and Kansas, however, it is an item that is occasionally discussed by other States. The intent of the law is to bring equity to the school systems that are affected by the Federal presence. In the case of New Mexico, as much as 95 percent of those dollars that are generated by those students go back to the State and then is used to supplement the budget in that State. That is certainly not the intent of that law. The intent is to provide equal opportunity in all areas from technology to just the basic programs that our children so dearly need.

The issue of accountability occasionally comes up and has been mentioned in the President's recommendations. We believe that we currently have an accountability program in place through Indian Policies and Procedures, it is called IPPs. Under current law, we hold hearings with Indian parents, as well as are held accountable by our school boards locally, many times of whom are all Indian school boards as well. And so we believe that the Indian Policies and Procedures adequately address the issue of accountability.

The issue of construction is one that is glaring out there. Over 65 percent of the buildings on Indian impacted schools are over 20 years old and of that group, over 38 percent are over 30 years old. They lack the infrastructure, in many cases, for technology. They lack adequate space. Many times we have gone to temporary facilities just to be able to provide basic classroom space temporary in the sense of sometimes this has gone 10 and 20 and even 30 years to house unhoused Indian children here.

There are a number of bills that are currently in Congress. We support these efforts. We believe that the Baucus-Hagel bill has some real merits but we would ask that there be provisions for those schools that are 100 percent impacted by Federal presence. In other words, they lack the ability to bond or levy for the purposes of construction. In those cases, those school districts are totally dependent on the efforts outside, either State or Federal. And we believe that it is probably going to need a combination—a collaborative effort which would be local, State, and Federal to adequately address those needs.

We also recognize that Impact Aid is really not an area that the Senate Committee on Indian Affairs would normally address. What we would ask though, is that you support our efforts and make recommendation to the Senate Education Committee as well as Finance, to address the areas that we have touched on this morning.

Again, on behalf of the National Association of Indian Impacted Schools, I thank you for this opportunity and would welcome the opportunity to respond to any questions that you may have.

[Prepared statement of Mr. Gish appears in appendix.]

The CHAIRMAN. Thank you. We will finish this committee with John Tippeconnic, but before you speak, Doctor, I understand your 8-year-old son is here in the audience. Is that the handsome young man that was over here in the front row?

Mr. TIPPECONNIC. Yes Sir.

The CHAIRMAN. Well, we wish him all the best. I hope he grows up to play ball with Gil Paterno, and later becomes the chair of this committee and, but even more important than that is being a good citizen and learning to be an effective person in your traditional world and the new modern world, high-tech communications through education. Thank you. Go ahead with your testimony.

STATEMENT OF JOHN TIPPECONNIC, EDUCATION POLICY STUDIES, PENNSYLVANIA STATE UNIVERSITY, COLLEGE OF EDUCATION, UNIVERSITY PARK, PA

Mr. TIPPECONNIC. Thank you, Mr. Chairman for those comments. I do appreciate them and he does too.

Mr. Chairman and Mr. Vice Chairman, I would like to thank you for inviting me to testify today. It is really an honor for me to come before you to talk about American Indian education, and I will limit my remarks, primarily to the reauthorization of ESEA and title IX.

As we all know, there has been progress in the education of American Indians and Alaska Natives over the past 30 years or so. As John Cheek mentioned, the 1969 Senate Special Subcommittee on Indian Education report, known as the Kennedy Report, recommended a comprehensive piece of legislation be enacted in Congress to meet the educational needs of American Indians and Alaska Natives. The Indian Education Act of 1972, along with other pieces of legislation, other initiatives, and the hard and dedicated work of many people, including Indian people, helped to bring about this progress.

Today, there are many things that are going well in schools for Indian students. We know that more parents are involved in the education of their children. We know there are more Indian teach-

ers, more Indian administrators, counselors, professors, and other educators. We know that more of the curriculum reflects tribal cultures languages, and histories. There is a growing body of Indian education research. And there is more tribal control of education with over 30 tribal colleges and over 110 tribally controlled schools.

However, as we all know, we are not where we want to be. There continues to be far too many students that are not doing well in our schools. We just have to look at some national reports, like the Indian Nations at Risk Report in 1991, the White House Conference in 1992, the Comprehensive Policy Statement on Indian Education in 1997, the Executive order in 1998, and the reports of NCES. And we see the data that reflects the difficulty that we have.

We continue to have high dropout rates; low academic achievement; lack of parent involvement; a lack of culturally relevant education; alcohol and substance abuse problems, the need for more Indian teachers, more administrators, more counselors, more professors and other educators. Much needs to be done. It is critical that the Indian Education Act, Indian Education Provisions of ESEA be reauthorized intact.

I would like to emphasize to the committee that the education of American Indians and Alaska Natives takes place in a very difficult and complex environment today. Providing quality education is not easy, and continues to present difficult challenges when you consider the diversity among tribes, the roles and responsibilities of the local, State, tribal, and national governments. The complexity is further compounded by the historical, political, economic, health, and social factors that also influence how Indian students learn and how they are taught in schools. All this points to the need to address Indian education from a comprehensive and collaborative viewpoint. Strategies are needed that are based on research, best practices, consultation, and respect and acknowledgement for the Federal responsibility in Indian education, and the Federal policy of tribal self-determination in Indian education.

I suggest that the reauthorization of the ESEA, maintain and strengthen its comprehensive and broad-based approach to meeting the wide array of educational needs of American Indians and Alaska Natives by providing opportunities at all levels, from early childhood to graduate school including adult education. This comprehensive approach has been the strength of title IX from the beginning, when the Indian Education Act was passed in 1972. This comprehensive approach provided opportunities and the necessary flexibility for students, schools, tribes, Indian organizations, institutions, colleges, and universities to provide services to meet local educational needs.

In my opinion, a fundamental change will be made, in title IX, if programs, as has been proposed, are eliminated from the law. It is a shame that, in recent years, budget requests and appropriations did not support the comprehensive vision of the authorizing committees in Congress. A lack of appropriated funds does not mean that needs do not exist in Indian education. A comprehensive approach is necessary to continue our success in Indian education. So, I oppose the Department's elimination of programs. And I think the rationale that they use of integrating and having other pro-

grams pick up the need is the faulty one. If we look back at integration of programs, when we talk about a larger context, most often Indian education concerns are not a priority and go to the bottom, and they just don't surface. Indian education needs are not met in an integrated approach.

I strongly recommend that research be emphasized and promoted in the reauthorization as well. Research is critical today, given the national emphasis on accountability, quality, results, standards, and student assessment. More importantly, research is essential to the improvement of teaching and learning, including student academic achievement. We must keep and strengthen the national research activity section of the law. We do this by moving beyond evaluations, the collection and analysis of base-line data, and the identification of effective approaches. These activities are important and they should continue in a collaborative fashion between OERI, NCES, OIE, other Federal agencies, and Indian people. However, both quantitative and qualitative applied research efforts, with academic rigor, are needed that focus on research questions that address teaching and learning. This type of research will not only inform practice but hopefully, will impact policy and appropriations.

The research forums currently being held as a result of the Presidential executive order will be helpful in determining important research questions that need to be asked and need to be answered.

It is encouraging to note that there is a great deal of interest in Indian education research with more American Indian and Alaskan Natives conducting research. The National Indian Education Association, The American Educational Research Association, The Comprehensive Policy Statement, and the Presidential Executive order, all promote research. The Comprehensive Policy Statement makes a number of suggestions that are worthy of consideration for inclusion in the reauthorization.

And Mr. Chairman, I would like to submit a copy of the Comprehensive Policy Statement, known as the "red book" that was developed by Indian people out in the field that

The CHAIRMAN. Without objection that will be included in the record.

Mr. TIPPECONNIC. Thank you.

This policy statement, as I indicated, mentions research and it recommends, among other recommendations, that there be established a national center for Indian education research. That we build tribal capacity to conduct and be involved in the research process. Indian people should be doing more of the research in Indian education. And that we insure protocol, especially tribal protocol, is respected in the research process. And that accurate and reliable data are used in the research process.

Without question, parent involvement has been a strength in title IX. Parent committees have been given a voice with authority in the operation of programs and has been the entry point for many parents in the education of their children. However, we know that parent involvement continues to be a challenge for most programs in at least three ways. First, getting more parents involved in parent committees. Second, getting the regular classroom teachers involved with the parent committees and with parents in general.

And third, getting parents to be involved in the daily school activities of their children.

If the LEA Formula Grant Program, requires a comprehensive program and a school wide approach to meeting the needs of Indian children, including impacting title I, and regular classroom teachers, then it only makes sense that the parent committees' role and responsibility also be comprehensive and go beyond the Formula Grant Supplemental Program. I think there should be some language in the reauthorization that requires LEAs to coordinate parent committees with other governance bodies to facilitate parent committee involvement with classroom teachers.

Let me just make one short comment about higher education. An initial strength of the program that became a weakness was providing opportunities for colleges and universities to prepare American Indians and Alaska Natives to become educators including administrators, counselors, and professionals in the fields of medicine, psychology, law, engineering, business administration, natural resources, education, and related fields. The strengths and weaknesses of the program are unfortunately related to funding. Although there are more American Indians and Alaska Natives attending colleges, we still need more. The current provisions in the law are adequate and I think they should remain. I am pleased that the department ran a competition this year for Demonstration and Professional Development Grants. But I also recommend that the Fellowship Program for Indian students remain. The Fellowship Program provides a choice of colleges for students to attend, and universities to earn a degree. And it also provides them a choice of what to major in.

Just one final comment, I think that the section on grants to tribes for education, administration planning, and development should be retained. Tribes are key partners in the educational process of their tribal members. Any activity should include tribal involvement. This is only in keeping with the Federal responsibility, the government relationship, and the Federal policy of tribal self-determination.

The CHAIRMAN. We need to move on, Doctor.

Mr. TIPPECONNIC. Okay, the rest of my comments are included in the testimony.

[Prepared statement of Mr. Tippeconnic appears in appendix.]

The CHAIRMAN. That will be included in the record. But we need to have a little bit of time to ask some questions of you, too.

Governor Tortalita, is that pronounced right? Am I pronouncing it right?

Mr. TORTALITA. Yes.

The CHAIRMAN. Your comments, I think, were really well received. When we want to build a building in a school district, a non-Indian school district, and we don't have the existing money, as we obviously do nationwide, local property taxes go up, and you get the money, if it is available, to build your school building. But Indian schools don't have that option, because they can't levy to raise taxes on tribal lands. So how do your schools, if Impact Aid is not there, if it can't be used for construction, only for programs, how do you get the money for the construction if you need a new building?

Mr. TORTALITA. We currently have two things in place. I can't remember the exact dollars, but we are bonded to 100 percent capacity so, we have to raise school class construction moneys and for renovation. And we have gotten some dollar support through the State legislators and kind of matching funds with what is raised within the local community by tax incentives itself with properties. And also

The CHAIRMAN. Taxing what properties?

Mr. TORTALITA. Properties within the school districts.

The CHAIRMAN. Non-Indian properties?

Mr. TORTALITA. Yes; non-Indian, and getting dollars from our State legislators in the State of New Mexico. So it has been a matching type of funding that we——

The CHAIRMAN. Do you find that difficult to get money from the State legislature?

Mr. TORTALITA. Yes; it has been. It has been very difficult, because of not understanding, and they keep referring to \$815 which aren't available.

The CHAIRMAN. How many of your State legislators in New Mexico are Indian, are enrolled members of tribes?

Mr. TORTALITA. Probably only about four members.

The CHAIRMAN. Only four out of how many?

Mr. TORTALITA. I can't remember the exact number.

The CHAIRMAN. That legislature only meets early spring for about 1 month in New Mexico?

Mr. TORTALITA. Yes; for 1 month.

The CHAIRMAN. Okay, thank you.

Mr. TORTALITA. One other point that I would like to make, and you know in order for education to really work, one of the things that has really been bothering me is that in the BIA schools we feed our students. But in the public schools, we do not feed our students. So what is the difference between Native American students that attend public schools and Native American students that attend BIA schools, and we do not treat them equally in not feeding them.

The CHAIRMAN. Lunch programs?

Mr. TORTALITA. No. No. Not in the Indian school setting. The students have to pay for their own meals in the public school settings. And a student will not learn on an empty stomach. That is all I needed to say.

The CHAIRMAN. But the students that have a free lunch or paid for, it's not based on any ethnic consideration; it is based on income, isn't it? So if they are below a certain income then they can get free school lunch.

Mr. TORTALITA. Right. But——

The CHAIRMAN. Indian students don't qualify for that? Even if they are below a certain income?

Mr. TORTALITA. Only very few. Probably less than 2 percent of them qualify.

The CHAIRMAN. Mr. Charley, the Navajo Nation School System includes schools in four different States. Is that correct?

Mr. CHARLEY. That is correct.

The CHAIRMAN. And I happen to live in that four corners area of the four States.

We heard from other witnesses about the negative effects of Impact Aid in some States. What has your experience been with the four States: New Mexico, Colorado, Arizona, and Utah? Do you find one more State supportive than the other when you need State help for Indian schools?

Mr. CHARLEY. We have been getting a lot of support from Utah, Colorado, and Arizona. It is just that New Mexico continues to have the retention cycles.

The CHAIRMAN. Well, in the State of Colorado, as an example, the Lieutenant Governor, by statute, only has one statutory duty, and that is to be the chair of the Commission on Indian Affairs so they can focus on some things of that nature. Do the other States have somebody in their State legislatures statutory designated to deal with the tribes?

Mr. CHARLEY. Being more familiar with New Mexico, there is an office that is handling those types of issues.

The CHAIRMAN. Certainly low funding levels result in fewer qualified teachers, poor schools, overcrowded classrooms, and things of that nature. And when you have that problem, you often have a problem with retaining accreditation. Have any of the Navajo Nation schools lost accreditation because of these reasons?

Mr. CHARLEY. Mr. Chairman, at this point in time, I am not aware of any Navajo Nation schools losing accreditation.

The CHAIRMAN. Speak a little louder into the microphone, I can't hear you. I am sorry.

Mr. CHARLEY. Mr. Chairman, at this point in time, I am not aware of any Navajo Nation school losing accreditation in New Mexico.

The CHAIRMAN. And, Mr. Gish. Your testimony lays out some support for the concept of forward funding revenues on Impact Aid. How would you describe how the funds are currently distributed? And how would forward funding help the school challenges?

Mr. GISH. Mr. Chairman, the forward funding issue is one that plagues the Impact Aid program. Currently, appropriations come in the year that they are received. We all the school administrators, and boards of education, are asked to make decisions on programs and personnel very early in our school year, probably as early as March in the case of Minnesota. We have to essentially, predict or speculate that the Impact Aid dollars that will support the programs, will be coming. As is evidenced in this current year, we have not received our appropriations, and here we are at the end of October, at least two months into our school year. Therefore we are either working from fund balances that we have been able to maintain in our school district, or even worse, we may have had to go out as a school district and borrow dollars in order to be able to provide the funding for the programs and personnel. That of course, costs us interest dollars, and those dollars are never recovered, and so the issue of forward funding is one that again, is just the fine tuning of the law, and one of which, if we just moved the funding cycle either by forward funding as a lot of education programs that float through Congress are, or at least in our case, to be able to move it back a few months so that we don't have to take the risk of not getting the dollars and therefore be obligated for those funds and have to take them from other programs.

The CHAIRMAN. Thank you. And Mr. Tippeconnic, you were once the director of the BIA's Office of Indian Education. Is that not true?

Mr. TIPPECONNIC. Yes, Mr. Chairman.

The CHAIRMAN. How would describe the working relationship between the Department of Education and the Bureau, regarding education of Indian kids?

Mr. TIPPECONNIC. A difficult one.

The CHAIRMAN. Is it getting any better?

Mr. TIPPECONNIC. I hope that it is getting better. I think it is difficult, in that there wasn't a real strong flow of communication, in my opinion, between the two departments. And the expectations seemed to be a little different.

The CHAIRMAN. You know that I introduced a bill, that tries to combine or at least require coordination of the existing programs in different agencies. Are you familiar with that bill?

Mr. TIPPECONNIC. No.

The CHAIRMAN. You might want to look it up, but I understand there has been some collaboration for research projects, things of that nature by the Department of Education, and the Office of Educational Research, and other Federal agencies. I didn't know if you thought that was an effective direction they are going, or not.

Mr. TIPPECONNIC. Without looking at your piece of legislation, I would in theory, support that. Some type of authority like that, I think, would speak loud and clear for coordination, and would probably make it happen, and make it happen in a positive sense. Thank you.

The CHAIRMAN. Senator Inouye did you have further questions or comments?

Senator INOUE. I just want to make certain that, am I correct to assume that all of you are in favor of the reauthorization of title IX?

[All respond in the affirmative.]

Senator INOUE. And that all of you would like to have the loophole provided by 20 U.S.C. 7709 be closed?

[All respond in the affirmative.]

Senator INOUE. This is on Impact Aid?

[All respond in the affirmative.]

Senator INOUE. On forward funding, I can understand your problem, but both of us are members of the Appropriations Committee and, it would appear that it will not go too far. The only time they have used forward funding is to make certain that the budget is balanced. But, other than that, these things do not happen. But, if we can close the loophole, it might help a little. Because for the most part you can anticipate what Impact Aid will bring in.

You heard the Secretary say that she would favor making educational aid programs something other than just annual appropriation for the entitlement. Are you in favor of that?

[Witnesses respond in the affirmative.]

Senator INOUE. Well, I can assure you, Sir, that I will do my very best to see that title IX becomes authorized, and that the loophole is closed.

I think if we can do those two things at this stage, we have done pretty well. Thank you very much.

The CHAIRMAN. I would add my voice to Senator Inouye's and would also support closing that loophole. I would think that we'd have some problems with the States, because I rather doubt they would support it, even though it is the right thing to do.

Well, with that, I appreciate this panel appearing here and without objection, Senator Akaka has introduced a statement for the record and that will be included too.

[Prepared statement of Senator Akaka appears in appendix.]

The CHAIRMAN. We may be issuing some followup questions, in fact to all of you, so if you could get back to us on that. We will keep this record open for 3 weeks. And with that, this committee hearing is adjourned.

[Whereupon, at 10:54 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII,
VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

I am pleased to join Chairman Campbell in welcoming the witnesses who will testify this morning on the Elementary and Secondary Education Act.

With an estimated Indian population of 2 million people and of those, approximately 40 percent under the age of 20, the need for competitive, yet unique and culturally appropriate, Indian education is urgent.

Currently, Indian students rank at or near the bottom of every educational indicator.

Their educational attainment is inhibited by high rates of poverty, unemployment and health problems.

In 1972, the Indian Education Amendments were enacted to provide supplementary funds for new programs targeted solely for Indian students.

These amendments were incorporated into the Elementary and Secondary Education Act as title IX.

And they provide continued funding for the unique and culturally related academic needs of Indian students.

As a result, Indian children have made significant educational gains.

For instance, between 1980 and 1990, the high school completion rate for Indian students living on reservations increased by 11 percent.

Although this is good news, we must remember that much more is required.

For at the same time, by 1990, 9 percent of Indian students who were 8th graders in 1988 had already dropped out of school.

Thus, despite the gains, there is still a significant need for additional funding and innovative programs in the Elementary and Secondary Education Act.

Finally, I must note that title IX also furthers the special historical and legal responsibility of the Federal Government to the indigenous people of the United States.

And by allowing for moneys to be provided directly to tribal governments, it strengthens the government to government relationship between the Federal Government and the Indian tribes and the Alaska Natives.

Indian children are vital to the future of a strong, productive and self-sufficient Indian country.

We must do everything possible to ensure that these future tribal leaders receive an education that is comparable to the education provided to all other American children.

Mr. Chairman, I look forward to expeditious action on the reauthorization of the Elementary and Secondary Education Act and I commend you for scheduling today's hearing on an issue that is critical to the future of America's native peoples.

PREPARED STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Thank you, Mr. Chairman, for holding this important hearing on the reauthorization of titles VIII and IX of the Elementary and Secondary Education Act. This is a significant step in continuing to address the unique educational needs of American Indian, Alaska Native, and Native Hawaiian communities.

Such efforts are important to meet the educational and culturally related academic needs of Native Americans which we know are frequently unaddressed. For example, school modernization problems prevalent in our public schools—crumbling buildings, poor air quality or ventilation, inadequate lighting—are heightened in Native American schools. We need to find ways to help Native American communities overcome these acute barriers to effective learning faced by children everyday.

The importance of education cannot be overstated. Innovative educational programs that encourage family and community participation, preserve culture and assist Native peoples in accessing a good education are significant in ensuring a bright future for all of us. I look forward to reviewing the testimony that will be presented on this important issue.

PREPARED STATEMENT OF HON. KENT CONRAD, U.S. SENATOR FROM NORTH DAKOTA

Mr. Chairman, thank you for holding this hearing on the reauthorization of the Elementary and Secondary Education Act (ESEA) of 1965. This is a very important process, because the schools we provide for our children have an incredible impact on them during their formative years.

Education of Indian children is a Federal responsibility. The Bureau of Indian Affairs system is one of only two federally operated education systems [the Department of Defense system being the other].

To fulfill the obligations of the various treaties it signed with Indian nations, the Federal Government must assist tribes in meeting the education needs of Indian children. Federal education programs and funding can bring about long-term social and economic changes on Indian reservations.

The ESEA provides important funding for Indian education, including Impact Aid and programs specifically targeted toward the Native Americans, Alaska Natives, and Native Hawaiians. Unfortunately, like so many other programs created to fulfill the Federal responsibility to Indian children, many of these programs are inadequately funded or have not funded at all. Several programs within title IX of the ESEA have not been funded since the act was last authorized in 1994.

Indian parents care deeply about the education their children receive; they know that a solid education is one of the most important factors in building a better future for their children and for Indian country as a whole.

Like their parents, Indian students from North Dakota have also expressed to me their deep concern about their schools systems. They know that when education programs are underfunded, or are not funded at all, the Federal Government is not living up to its promises.

I am also deeply concerned that inadequate educational opportunities contribute to the hopelessness and despair that many Indian children feel. How can we tell Indian children that we care about their future if we cannot give them the education they need to prepare to compete in the world economy?

Mr. President, I joined tribal leaders from the Great Plains at the White House earlier this year. One of the issues they raised with the President and his Cabinet members was education. They know that the Federal Government is not keeping its end of the bargain in providing a quality education for all Indian children. With the reauthorization of the ESEA, I believe we have an opportunity to do better by these young people.

Today the committee will hear from experts in Indian education and learn what is needed in a reauthorized ESEA. I look forward to the witnesses' testimony.

Thank you, Mr. Chairman.

Testimony of
Judith Johnson
Acting Assistant Secretary for
Elementary and Secondary Education
U.S. Department of Education
On Reauthorization of the Elementary and Secondary Education Act of 1965
U.S. Senate Committee on Indian Affairs
October 27, 1999

Thank you Mr. Chairman, Senator Inouye, and members of the Committee for inviting me to discuss the Administration's proposal for the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) and, in particular, the reauthorization of ESEA programs for American Indians, Native Hawaiians, and Alaska Natives.

Five years ago, in the reauthorization of the ESEA, this Administration set out to ensure that all children, regardless of background, could reach and would be held to high standards. The President and Secretary Riley reject the "tyranny of low expectations," the deeply flawed assumption that it is acceptable to provide children in poverty with a second- or even a third-class education. This Administration has never been willing to accept that assumption. Every child needs and deserves a world class education. No child should be allowed to drift through school unable to read. No child should have an unqualified teacher. And no child should have to go to a failing school.

Since that time, to help ensure that all students are challenged to achieve to their full ability, the States and school districts have taken significant steps to establish high standards for

all students, particularly poor and educationally disadvantaged students. More importantly, there are promising signs of real State progress toward meeting those standards.

The themes in our reauthorization proposal are intended to continue the progress that the nation's schools have already made in helping all students increase their academic performance, including poor, minority, low-income, and educationally disadvantaged students. Our proposal builds on the 1994 reauthorization to encourage all of our students, including American Indians, Native Hawaiians, and Alaska Natives, to improve their academic performance..

To increase educational excellence and equity, the Administration's ESEA reauthorization proposal has six broad themes. They are: (1) implementing high standards in every classroom; (2) reducing class sizes in the early grades and helping every child read well by the 3rd grade, if not earlier; (3) strengthening teacher and principal quality; (4) emphasizing accountability for school and student performance, including turning around failing schools, and toughening accountability in Federal education programs; (5) providing safe, healthy, and disciplined learning environments that better connect students, teachers, families, and communities; and (6) Modernizing schools for the 21st Century by putting useful technology in the classrooms, making schools smaller and more personalized, increasing opportunities to learn foreign languages, and expanding after-school and summer programs.

Our investments in Title I, Comprehensive School Reform Demonstrations, the Class-Size Reduction program, the Reading Excellence Act, and after-school programs, among others, are important components of our effort to get communities and their teachers and principals the resources they need to raise achievement for all students, including American Indians, Native Hawaiians, and Alaska Natives. These important investments, and their targeting provisions, rightly focus on providing resources to communities that do not have the necessary resources to

provide a world-class education to all their children so that the educational achievement gap between the “haves” and the “have nots” will, over time, disappear.

Our reauthorization proposal recognizes that qualified teachers are a critical in-school factor in improving student achievement, and all of our children deserve to have high-quality and well-prepared teachers in the classroom. It would end the practice of putting unqualified teachers in front of the most educationally disadvantaged and educationally at-risk students, improve resources for professional development so that our teachers are able to improve their skills, train educators in the use of technology in the classroom, prepare teachers to teach to high standards for all students, and help ensure that teachers are well trained to teach students with limited English proficiency.

Our reauthorization proposal includes significant language on accountability that strikes a careful balance between, on the one hand, giving schools the increased support and flexibility they need to raise achievement levels for all students and, on the other hand, holding schools accountable when they do not measure up to clearly established goals. Toward that end, our accountability provisions include measures intended to end social promotion, encourage school report cards, identify and turn around low-performing schools, improve discipline in schools and classrooms, and putting in place measurable ways to make change happen, such as standards-based assessments at different grade levels.

These measures will help improve the educational opportunities for American Indian, Native Hawaiian, and Alaska Native students and focus more attention on helping them achieve to challenging standards.

American Indians and Alaska Natives have made progress in recent decades but continue to be disproportionately affected by poverty and low educational attainment and have fewer

educational opportunities than other students. For example, recent data show that:

- The high school completion rate for American Indians, ages 20 to 24, is 70 percent, 12.5 percent below the national average.
- In 1990, 36.2 percent of American Indian children ages 5-17 were living below the poverty level, compared with 17 percent of all other children.
- In 1992, 31 percent of American Indian high school graduates earned the core credits recommended by *A Nation at Risk* -- a dramatic increase over the 6 percent reported in 1982. However, the proportion of American Indian high school graduates taking the recommended core credits was well below that for all high school students (47 percent).
- American Indian students, on average, score lower on the National Assessment of Education Progress than other students. For example, 48 percent of American Indian 4th graders scored "at or above basic" on the 1994 reading assessment, compared to 60 percent of all students.
- The combined score on the SAT in 1994-95 for American Indians was 850, or 60 points lower than the combined score of 910 reported for all students.
- In 1990, 9.3 percent of American Indian persons 25 years old and over had attained a bachelor's degree or higher, as compared to 20.3 percent for all persons.

These data undergird the important role that the Indian Education programs play in supporting the academic achievement of American Indians, Native Hawaiians, and Alaska Natives. They also demonstrate the need for continued support for the important programs and

services that are provided under the Indian Education, Native Hawaiian, and Alaska Native programs.

In 1994, Congress amended the Indian Education authorization to focus programs on improving the capacity of schools to provide challenging curriculum to Indian students. The statute now supports a comprehensive approach to educational reform and helps ensure that Indians benefit from national education reforms and receive every opportunity to achieve to high standards. The Title IX Indian Education programs under ESEA provide direct assistance for the education of Indian children and adults; the training of Indian individuals as educators and in other professions serving Indian people; and research, evaluation, and data collection. The programs promote the efforts of local educational agencies, State educational agencies, and Indian tribes and organizations to meet the unique educational and culturally related needs of these students. These programs also provide the authority for our proposed initiative for an American Indian Teacher Corps, through which 1,000 Indians will be recruited and trained to teach in areas where there are high concentrations of Indians.

The Administration's reauthorization proposal builds on the significant changes made in the 1994 reauthorization. While the proposal would maintain our commitment to the formula grant program to improve the quality of instruction that American Indian students receive, some minor changes are proposed. These changes include a clarification to eliminate confusion regarding the role of the parent committee, and a modification of the BIA application process to reduce redundancy in student identifications. Consistent with general Administration policy, several un-funded, generally duplicative authorizations would be repealed.

This Administration is particularly committed to improving the educational achievement of American Indian, Native Hawaiian, and Alaska Native students. Our reauthorization proposal

is itself evidence of this commitment and the tremendous job done in the 1994 reauthorization to improve education programs for these students. The previous reauthorization made significant changes in the Indian Education programs, and we have spent the past several years implementing those important reforms. In our consultation with Indian educators, tribes, parents, and students, as well as with the broader education community, we heard a strong consensus for continuing with the current mission.

Our reauthorization proposals for the Native Hawaiian and Alaska Native programs are intended to ease the administration of the programs in order to facilitate implementation of the innovative educational strategies that are emerging from native educators in Hawaii and Alaska. The current Native Hawaiian authorization has separate authorities in 7 different areas: Gifted and Talented Education; Special Education; Higher Education; Curriculum Development, Teacher Training, and Recruitment; Family-Based Education Centers; Community-Based Education Centers; and the Native Hawaiian Education and Island Councils. The current Alaska Native authorization has separate authorities in three different areas: Educational Planning, Curriculum Development, Teacher Training, and Recruitment; Home-Based Education for Preschool Children; and Student Enrichment Programs. Our experience has shown us that the particular requirements of these authorities has made it difficult to fund creative and new approaches to meeting the unique needs of Native Hawaiians and Alaska Natives.

For the Native Hawaiian program, we propose to merge the 7 authorities into one comprehensive authority that would give the Department the flexibility to fund creative, cross-cutting approaches to meeting the educational and culturally related needs of Native Hawaiian students. Similarly for the Alaska Native program, we propose to merge the three authorities into one comprehensive authority.

;

The Administration strongly opposes the proposal by the House Education and the Workforce Committee to repeal the Native Hawaiian programs. The House Committee's action fails to consider the unique educational and culturally related needs of the Native Hawaiian population.

I would also like to point out that our proposal would retain the current set-asides for native populations and the Bureau of Indian Affairs in our State formula programs (except where the bill would consolidate programs). These set-asides provide funding for Title I, Class Size Reduction, professional development, Safe and Drug-Free Schools, and Homeless Education. These set-asides are important to maintain because they ensure that funds are available to serve the educational needs of American Indians, Native Hawaiians, and Alaska Natives.

Our reauthorization proposal is not the only effort we are making to improve educational opportunities for Indian students. On August 6, 1998, President Clinton signed Executive Order 13096, which cited the importance of improving educational achievement and academic progress for American Indian and Alaska Native students and reaching the goal of preparing every student for responsible citizenship, continued learning, and productive employment.

In order to fulfill that commitment, the President directed Federal agencies to focus special attention on six key goals, which include:

- 1) improving reading and mathematics;
- 2) increasing high school completion and postsecondary attendance rates;
- 3) reducing the influence of long-standing factors that impede educational performance, such as poverty and substance abuse;
- 4) creating strong, safe, and drug-free school environments;
- 5) improving science education; and

6) expanding the use of educational technology.

The President called for the development of a comprehensive Federal Indian education policy to accomplish the six goals and address the fragmentation of government services and the complexity of inter-governmental relationships affecting the education of American Indian and Alaska Native students.

This Executive Order is an important step forward in addressing systemic and long-standing difficulties in meeting the unique needs of our American Indian and Alaska Native students. The resulting Policy will set the stage for important discussions surrounding the programs and services that we provide to American Indian and Alaska Native students, and will have a positive impact on the educational achievement and academic opportunities available to them.

Thank you again for the opportunity to appear before this Committee. I look forward to discussing our reauthorization proposal with you and answering any questions that you may have.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

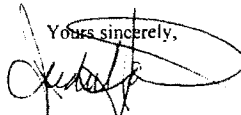
November 16, 1999

Honorable Ben Nighthorse Campbell
Chairman
United States Senate Committee on Indian Affairs
Washington, D.C. 20510-6450

Dear Mr. Chairman:

Enclosed is the Department's response to the questions that you submitted in writing following my testimony before your committee in October.

We appreciate this opportunity to further articulate our proposals and priorities and look forward to continuing to work with you and the other Members of your committee.

Yours sincerely,


Judith Johnson
Acting Assistant Secretary for
Elementary and Secondary Education

Enclosure

IMPACT AID – Equalization process

Question: There seems to be some confusion regarding the Equalization process and how a state, such as New Mexico ends up with approximately 95% of its LEAs' Impact Aid. Can you explain what happens to Impact Aid money once it is sent to a LEA if its state meets the disparity test? How does the state end up with the money?

Answer: Although local school district officials sometimes describe the Impact Aid equalization provisions in a way that suggests that the State receives a portion of their Impact Aid payments, this is not accurate. Impact Aid is paid directly to local school districts, where it becomes part of the general fund available for current expenditures.

Section 8009 of the Elementary and Secondary Education Act (ESEA) generally prohibits States from reducing State education aid to districts that receive Impact Aid. The law includes an exception, however, for those States with education funding programs that are determined to be equalized. Section 8009 provides a “disparity test” to measure how well the State’s funding program is equalized. The disparity test examines whether the degree of disparity in per-pupil expenditures or revenues of the school districts at the fifth and the ninety-fifth percentiles (in per-pupil funding) is 25 percent or less. Under the current statutory provisions, a State that meets this standard is deemed to be equalized. Alaska, Kansas, and New Mexico currently meet this standard and are permitted under the statute to reduce State education aid to local school districts that receive Impact Aid. The purpose of this exception in the law is to prevent Impact Aid from disequalizing education funding in States that are otherwise substantially equalized.

School districts in States that are determined to be equalized under these provisions retain all of their Impact Aid. After the certified States are informed of the distribution of Impact Aid, they may reduce the amounts of State education aid to these school districts under the State funding formulas. A certified State may deduct Impact Aid in the proportion that local tax revenues covered under a State equalization program are of total local tax revenues. Before the proportion is applied, certain categories of Impact Aid must be excluded from the calculation of the State’s offset. Specifically, no offsets may be taken for: (1) Impact Aid payments for children with disabilities under section 8003(d); (2) Impact Aid payments for heavily impacted districts under section 8003(f); (3) Impact Aid payments for children with disabilities under section 8003(g); and (4) the portion of Impact Aid basic support payments attributable to the extra formula weight for children residing on Indian lands. Because of these exclusions, it is unlikely that a State could offset as much as 95 percent of a school district’s Impact Aid.

IMPACT AID – Equalization formula

Question: Do you feel the disparity test used to determine whether a state is equalized is an accurate test? What factors are used to determine when a state is equalized? What types of numbers do you feel should be examined when determining equalization?

Answer: We believe the current disparity test is generally a reasonable representation of the degree of equalization in a State. Other more mathematically complex formulas are sometimes used to evaluate equalization, but the disparity test is easily understood by State and

local school district officials, and readily applied. We believe the problem resides with the adequacy of State funding for education.

The disparity test does not consider the adequacy of the education funding provided by the State program. In New Mexico, where several school districts have challenged the State's right to reduce State aid to Impact Aid recipients, the average per-pupil expenditure is significantly below the national average. Some school districts in New Mexico believe that they do not receive sufficient funds from State aid to provide adequate services. As part of the Administration's reauthorization proposal for Impact Aid, we are proposing to add a minimum funding requirement to the disparity test in Section 8009 of the ESEA. In addition to meeting the disparity test, any State seeking permission to offset Impact Aid in its State formula would be required to demonstrate that the average per-pupil expenditure in the State is at least 80 percent of the national average.

During the 1994 reauthorization of the ESEA, the Administration proposed to make the disparity test more rigorous over time by requiring a reduced disparity of 20 percent or less between the per-pupil expenditures of the school districts at the fifth and the ninety-fifth percentiles in the State. The Congress initially adopted this more stringent standard, but later amendments returned the law to the original standard.

INDIAN EDUCATION – Cultural sensitivity training of teachers

Question: In your testimony, you discussed the need for teachers working with Indian students to have culturally sensitivity training and to be aware of the influence the student's unique heritage has on their learning experience. Does the Department of Education presently provide any type of sensitivity training or is there any funds available for such training?

Answer: The Department does not provide sensitivity training directly to teachers; however, program funds may be used by grantees for professional development and other in-service activities that include such training. The use of funds in this manner is allowable under the Indian Education Formula Grants to Local Educational Agency Program and the two discretionary grant programs, Demonstration Grants for Indian Children and Professional Development.

AMERICAN INDIAN TEACHER CORPS

Question: In your testimony you mentioned your desire to see 1000 Native American teachers in Indian schools. Do you have any statistics reflecting the present number of Indian teachers in the United States and how many teach at predominately Indian schools?

Answer: According to the National Center for Education Statistics, Schools and Staffing Survey: 1993-94, there were a total of approximately 2,564,000 teachers in publicly funded schools, of whom less than 1 percent were American Indian or Alaska Native.

- In BIA/Tribal schools, there were approximately 3,341 teachers, of whom 37.8 percent were American Indian or Alaska Native.
- In public schools with high concentrations of Indian students (25 percent of the student population or more) there were 22,891 teachers, of whom 15.4 percent were American Indian or Alaska Native.

For the next Schools and Staffing Survey (1999-2000), the Department will oversample schools with high concentrations of Indian students, which will update this information.

Question: Does the Department of Education have a recruitment plan in place to assist in achieving the 1000 Native American teacher goal?

Answer: The Department's goal is to increase the number of American Indian teachers in schools with high populations of Indian students by 1,000, over a four-year period. This would be accomplished through the Indian Education Professional Development discretionary grant program. The Department will establish priorities to ensure that grantees provide training programs in the field of education and related areas that can be completed by American Indian and Alaska Native participants within the award period of their grants. Other program priorities that we may consider include: (1) targeting applicants that have the ability to employ the trainees upon completion of their program, such as LEAs with high Indian student populations, tribally operated elementary and secondary schools, and tribal colleges; and (2) targeting applicants that will train currently employed paraprofessional staff to become teachers.

Eligible applicants for the Professional Development program include: institutions of higher education; Indian institutions of higher education; and a State or local educational agency, or an Indian tribe or organization, when in consortium with an institution of higher education. Participants must perform work related to the training received and that benefits Indian people, or repay all or a prorated part of the assistance received.

Achievement of the 1,000-teacher goal will require continued annual funding of the initiative by Congress. The pending fiscal year 2000 appropriations bill includes \$10 million to begin the initiative.

INDIAN STUDENT ACADEMIC ACHIEVEMENT

Question: Are there standards in place that the Department of Education uses to measure students' achievement? How do Indian students rank nationwide when these standards are applied?

Answer: The Department does not set national standards of academic achievement. States set their own challenging standards, with help from such programs as Goals 2000 and Title I. Currently, the 48 States, Puerto Rico, and the District of Columbia have developed State-level standards for what children should know and be able to do, and two States have pushed for standards at the local level. The Department does, however, sponsor the National Assessment of Educational Achievement (NAEP), also known as the Nation's Report Card, which for more than 20 years has attempted to measure what students know and are able to do in range of subjects. NAEP reports results by race/ethnicity, including breakouts for black, Hispanic, Asian-Pacific Islander, and American Indian students.

Recent NAEP results include the following: 47 percent of American Indian 4th graders scored at or above the Basic level on the 1998 NAEP Reading Assessment, compared to a nationwide average of 62 percent. American Indian student scores were higher than those of black or Hispanic students, but lower than those of white or Asian/Pacific Islander students. This relative performance of the different ethnic groups was maintained on the 8th- and 12th-grade reading assessments, although Hispanics nearly closed the gap with American Indians on the 8th-grade assessment.

In mathematics, 52 percent of American Indian 4th graders scored at or above the Basic level on the 1996 NAEP test, compared to the nationwide average of 64 percent. As in reading, American Indians scored significantly higher than black or Hispanic students, but well below white and Asian/Pacific Islander students.

It is important to note that NAEP results for American Indian students are not as reliable as those for other racial/ethnic groups because of the relatively small number of American Indians participating in the assessments. The need for more reliable data is one reason that President Clinton, in his Executive Order on American Indian and Alaska Native Education, has called for the establishment of a comprehensive research agenda to determine the educational status of Indian students.

In addition, the President's proposal for reauthorizing the Elementary and Secondary Education Act of 1965 (ESEA) would require States and school districts to report achievement data by major racial and ethnic groups, including American Indians.

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Question: As you are aware, the National Advisory Council on Indian Education (NACIE) office has been closed since May, 1996. Does the Department intend on re-establishing an office and the full-time staff needed for (NACIE) -- a Presidentially appointed council?

Answer: We have found that we can support NACIE's important activities effectively without providing the Council with separate office space and a full-time staff. Using the Department's administrative funds, we can provide support and travel expenses for NACIE's regular meetings. Additionally, the professional staff at the Office of Indian Education provides NACIE with the assistance necessary to fulfill its duties. This is the same arrangement that the Department has used for some of the other presidentially appointed councils.

We recognize the importance of NACIE to the Indian community. NACIE is involved in ensuring that the Executive Order on American Indian and Alaska Native Education is implemented effectively and that the greater American Indian community can provide input into the implementation of the Order and other departmental policy development initiatives.

CATEGORICAL CENTER FOR TECHNICAL ASSISTANCE

Question: How will the Categorical Center that is designated for the American Indian population in the Administration's ESEA proposal effectively meet the needs of the more than 1,200 formula grantees in over 40 states?

Answer: The Administration's ESEA reauthorization proposal calls for the creation of not one, but two new technical assistance centers serving the Nation dedicated to improving teaching and learning for American Indian students. These Special Needs Technical Assistance Centers, which would be funded through grants or contracts to public or private nonprofit entities, would provide expertise and assistance to State educational agencies, local educational agencies, schools (including Bureau of Indian Affairs-funded schools), tribes, community-based organizations, and other ESEA recipients concerning the specific instructional, linguistic, and cultural needs of limited English proficient, migratory, American Indian, and Alaska Native students and on implementation of other Federal, State, and local programs and resources.

These Special Needs Technical Assistance Centers would not be the only source of ESEA support to meet the needs of Indian Education formula grantees. The Administration's reauthorization proposal also would create a system in which States and large school districts receive direct formula grants to purchase the technical assistance that best fits their needs and to strengthen their capacity to acquire and use technical assistance.

In addition, to ensure that American Indian and other populations served under the ESEA benefit from comprehensive support for school improvement, each Special Needs Technical Assistance Center would be required to: (1) participate in a technical assistance network with the Department and other federally supported technical assistance providers in order to

coordinate services and resources; (2) ensure that the services it provides are of high quality, are cost effective, reflect the best information available from research and practice, and are aligned with State and local education reform efforts; (3) in collaboration with other entities, develop a targeted approach to providing technical assistance that gives priority to providing intensive, ongoing services to high-poverty LEAs and schools that are most in need of raising student achievement; and (4) cooperate with the Secretary in carrying out such activities as publicly disseminating materials and information that are produced by the Department and are relevant to the center's purpose, expertise, and mission.

In addition, our technical assistance proposal would create a technology-based information dissemination system that supports improved education for all children and reflects the needs and inputs of students, including American Indian students, and their teachers, administrators, and parents. Finally, the Special Needs Technical Assistance Centers would be required to use electronic dissemination networks and World Wide Web-based resources, as well as other technologies, to expand their reach and improve delivery of high-quality technical assistance.

TECHNOLOGY IN THE CLASSROOM

Question: I believe that education in Native communities would be helped more than any other if we could get state-of-the-art technology in these classrooms. Is the Administration making any proposal—even a "pilot" project—that would bring Internet, library services on line, and other high-tech tools to Indian education?

Answer: We strongly agree that educational technology can be an effective tool for helping all children achieve to challenging standards. The Department has several programs that assist schools with high concentrations of Indian students to integrate technology effectively into instruction.

For example, in fiscal year 1999 the Technology Literacy Challenge Fund (TLCF) provided \$2.125 million to assist BIA-funded schools to integrate technology effectively into classrooms. BIA schools use TLCF funds to: (1) connect schools to the Internet; (2) ensure that every teacher is prepared to use technology effectively; and (3) support the collection and dissemination of information about technology in Indian schools.

Technology Innovation Challenge Grants (TICG) are competitive grants that support partnerships to develop innovative instructional practices and technology-based learning content. As one example of such grants, a consortium of school districts, State departments of education, and institutions of higher education are initiating a program of technology-based professional development in four centers across the "Four-Corners" region. The professional development focuses on preparing teachers to use educational technology to help students meet challenging standards. The projects will also develop a free-access web site that will allow for the dissemination of the professional development models developed with program funds to teachers across the country. As a second example, a diverse consortium led by the Todd County (South Dakota) School District is using a TICG grant to meet the needs of nearly 3,000 disadvantaged and special needs Native American youth in a tri-State region.

The Community Technology Centers (CTC) program was established in FY 1999 to provide, through the creation and expansion of community technology centers, access to computers and technology for children and adults in low-income communities. Several of the initial grants are benefiting communities with high concentrations of Native Americans. For example, the Blackfoot School District received a grant to build a community technology center that will serve students and community members living on the Shoshone-Bannock Reservation in southeastern Idaho. The Ganado Technology Center, located in the Navajo nation, will fund improvements to a school-based computer laboratory to provide expanded service to the wider community to encourage the participation of adults in information technology training.

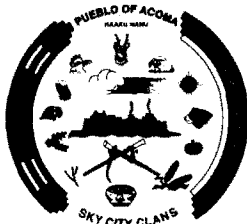
Schools serving large concentrations of American Indian students also are able to take advantage of E-Rate discounts on telecommunications services, Internet access, and internal connections.

PROGRAM ADMINISTRATION

Question: Currently, the Indian Adult Education and American Indian Teacher Corps program are housed and implemented in the Office of Elementary and Secondary Education. It has come to the Committee's attention of a request to reauthorize these programs in the Office of Postsecondary Education to more appropriately align the programs' goals and objectives with institutions of higher education, specifically the Tribal Colleges and Universities. Why and how are these programs currently set up as they are? Would you have any comment or objection to this recommendation to the proposal of implementing these programs within the Office of Postsecondary Education?

Answer: All of the programs authorized under Title IX, Part A, Indian Education are supervised under the direction of the Office of Indian Education (OIE). OIE has the special responsibility to ensure that American Indian and Alaska Native students are able to participate in programs that meet their unique cultural and academic needs. OIE has the staff and resources necessary to provide program management and oversight for the programs, and the necessary expertise to ensure that the programs are operated in a way that maximizes their benefit to American Indians and Alaska Natives. OIE also has the lead role in implementing the President's Executive Order on Indian Education and, in this role, can administer the discretionary programs in a manner that reflects and contributes to the overall objectives of that Order.

Our Title IX, Part A programs are operated in a way that allows the development of a panoply of educational opportunities for Indian people. We believe that Indian people are well served by administering the Part A programs under one office, instead of placing those programs in various offices around the Department.



P.O. BOX 309
ACOMA, NEW MEXICO 87034

PUEBLO OF ACOMA
OFFICE OF THE GOVERNOR

TELEPHONE 505/552-6604
FAX 505/552-6600

Testimony of

Lloyd D. Tortalita
Governor of the Pueblo of Acoma

On The Reauthorization of
The Elementary and Secondary Education Act
Before The Senate Committee On Indian Affairs

October 27, 1999

I. INTRODUCTION

Honorable Chairman and Committee Members, on behalf of the Pueblo of Acoma, its children, youth and other life-long learners within the Acoma Reservation, I would like to express our appreciation for this opportunity to testify before your Committee on the reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA) and its subsequent amendments. For the Acoma Tribe, education is a priority. We firmly believe that education is the foundation upon which we can realize our self-determination goals and the key to achieving economic self-sufficiency.

My testimony will focus first on Impact Aid issues; Acoma strongly advocates the elimination of Section 8009 of Title VIII of the ESEA which creates a loophole allowing States to retain funds intended for school systems on or near federal lands, including reservation lands. Second, I will focus on many of the overall concerns raised by the National Indian Education Association regarding ESEA, which Acoma supports. Third, I would like to address funding of public schools that serve Indian communities as well as general education issues. I approach these issues not only as the Governor of Acoma, but also as a former District School Board Member, elected public official and coordinator for the Acoma Educational Services.

II. IMPACT AID FUNDING IN NEW MEXICO

New Mexico takes "impact aid" funds away from public schools serving Indian communities (as well as other federally impacted schools). Title VIII of the Elementary and Secondary Education Act (P.L. 103-382) provides "Impact Aid" funds for school systems located on or near federal lands to make up for the loss of property taxes due to the tax-exempt status of those lands. For Indian tribes, whose lands are held in trust by the United States, such funds are critical to the success of the local public school systems. In New Mexico, however, the State has reduced state funding to such schools, through 1998, by an amount equal to 95% of the Impact Aid funds. In 1999, the state reduced the funding by 75%. The funding that the State withholds is then redistributed to all schools in the state.

The Grants/Cibola County School District, where Acoma's youth go to school, is eligible for Impact Aid funds from the Federal Government under Section 8003 of Title VIII of the ESEA because

over 65% of the property in Cibola County is federal or trust land and therefore not taxable. In addition to National Forests, National Monuments and National Parks, the district encompasses the Pueblo of Acoma, Pueblo of Laguna and portions of the Navajo Nation. Most of the children and youth of the Pueblos and the Navajo Chapters in Cibola County attend public schools in the Grants/Cibola County School District.

The Loophole. Although eligible for Impact Aid funding, the Cibolla County schools actually receive only a fraction of the authorized amount. New Mexico has taken advantage of a loophole in the law which allows the State to reduce state funding to federally impacted school districts if the majority of the school districts in the state are funded within 25% of each other on a per student basis (Section 8009). This formula does not include the top 5% or the bottom 5% of schools by per student funding, which further skews the outcome. For example, Grants/Cibola County Schools receive only 52% of the funding received by the Los Alamos Public Schools on a per student basis. Acoma does not believe that our children deserve only half as much education as the children in Los Alamos, New Mexico. These statistics are all the more upsetting when funds designated to help our children, our held back by the State of New Mexico under this loophole.

In New Mexico's case, equality under this formula is achieved by effectively taking money from school systems which serve Indians and other federally impacted communities and redistributing the funds to all school systems. Under this redistribution system, Albuquerque public schools receive \$13 million in Impact Aid funds that they would otherwise be ineligible to receive. Meanwhile, school systems which serve Indian populations are deprived of critically needed funds, especially for school construction and renovation where the Indian schools greatly lag behind the non-Indian schools. For example, the Grants/Cibola County Schools, as well as Zuni and Gallup/McKinley County Schools, have used all their bonding capacity and are unable to generate enough property taxes to build any new schools. Meanwhile, the Albuquerque Public Schools have an unused bonding capacity of \$350 million.

Tax Cut for the Wealthy at the Expense of the Tribes. In 1976, when New Mexico invoked the equalization provision, the loss of Impact Aid funds to Indian tribes and other federally impacted communities was offset by state-wide redistribution of property taxes to all school systems. However, since then, the state property tax has been cut by 94%, giving wealthier districts a substantial tax break at the expense of the school districts which serve Indian communities.

Administration's Position. The Administration has proposed amending Section 8009 of the law, but Acoma remains concerned that the amendment will make no practical difference. Under the Administration's proposal, a state could only withhold the funds if (1) it can show that it has a program to equalize public education funding throughout the state and (2) the average per-pupil expenditure within the state is at least 80 percent of the national average. We understand that New Mexico funds its schools at about 80% of the national average.

Acoma does not believe that just because New Mexico chooses to underfund education, schools serving Indian and other federally impacted communities should be deprived of critically needed Impact Aid dollars.

Eliminate the Loophole. Congress provided for impact aid to assure quality educational opportunities for children residing on or near Federal property. Acoma urges the Congress, when it reauthorizes the Elementary and Secondary Education Act this year, to strike the loophole in Title VIII and allow the "Impact Aid" funds to be used as Congress originally intended. Acoma is supported in this matter by the National Association of Federally Impacted Schools, the Grants/Cibola County, Gallup/McKinley County Public Schools, and Zuni Public School District, and the Zuni Tribe.

Additionally we request stronger language in Section 8004 - Policies and Procedures Relating to Children Residing on Indian Lands, which will allow a Local Educational Agency to use its Impact Aid funds for activities designed to increase tribal and parental involvement in the education of Indian children, and to include involvement of Tribal Government in its definition of tribal involvement.

III. SUPPORT FOR NIEA POSITIONS

Support for State and Local School Reform. Acoma generally agrees with the positions taken by the National Indian Education Association in the following areas:

- * Retain all provisions in the Office of Educational Research and Improvement authorizing research, assessment, and include American Indians and Alaskan Natives as eligible applicants for program funding.

- * Retain all existing set-asides that currently provide funds for Bureau of Indian Affairs schools such as Safe and Drug Free Schools and Communities Act, Individuals with Disabilities Education Act, Education of Homeless Children and Youth, Title I Helping Disadvantaged Children Meet High Standards, Title II Eisenhower Math and Science, Title III Technology Literacy Challenge Fund, Goals 2000 and the Bilingual Education Programs.

- * Include language in all new or reauthorized ESEA programs that will identify Indian tribes, tribal schools and BIA schools as eligible applicants and continue to include BIA as a state education agency to ensure that all eligible Indian children are served.

- * Retain existing Title IX legislation regarding Indian Preference in personnel actions.

- * Retain all existing authorization for programs provided in current legislation.

- * Indian Student Eligibility forms (ED506) - The definition of Indian should be revised with considerable tribal consultation for clarity.

BIA School Funding under OIE Formula Grant Program. Acoma also makes the following recommendations for BIA Schools receiving funding under the OIE formula grant program. In many cases, these recommendations are similar if not the same as those made by the National Indian Education Association:

- * The Bureau of Indian Affairs should not be required to seek specific permission for use of state activity funds.

- * Include recognition of the BIA as a SEA in any new programs proposed and in existing programs that do not include BIA schools.

- * Include tribal standards in the definition of local standards.

- * Increase percentage of funding for BIA funded schools staff development in Title II.

- * Since BIA-funded schools serve American Indian students who are counted as high poverty students, BIA should not have to desegregate its student data in its reporting requirements.

- * Broaden the role of Title IX in BIA-funded schools so that students are provided an overall program that meets their culturally related needs, including integration of language and culture throughout the base curriculum rather than viewing Title IX as a separate program.

- * Allow BIA-funded schools to utilize the consolidated school reform plans to meet the requirements of comprehensive plans required by Title IX.

- * Mandate a relationship between BIA and Office of Bilingual Education including funding, in order to meet the goals of American Indian language development and determine a unified and viable approach to addressing the needs of LEP students.

- * Mandate BIA-funded schools to ensure that assessments utilized are culturally and linguistically cognitive-appropriate.

- * Provide a mechanism under Goals 2000 for States and BIA to jointly fund consortia projects including BIA funded and public schools to avoid conflicting regulations.

IV. FUNDING AND OTHER ISSUES

Increased funding for public schools which serve Indian communities. In recent years, there has been a great deal of focus on funding BIA schools on reservations. While it is important that these schools be adequately funded, the public schools which also serve Indian reservations should not be ignored. Most Indian students go to these public schools, which are generally underfunded, and have deficient and antiquated facilities. Most of Acoma's students go to such a school. We ask this Committee to consider ways to improve the funding of the public schools which serve Indian communities.

Consultation with Tribal Governments. The Department of Education does not currently have a policy on tribal consultation with Tribal Governments in spite of the fact that President Clinton issued an executive order on tribal consultation on May 14, 1998. We would like to see a section in the reauthorized ESEA that: (1) will clearly mandate the Department of Education to establish a policy on and a system for tribal consultation with Tribal Governments, (2) tribal consultation shall include all policy aspects that affect the education of Indian students throughout the country in both public and BIA schools, (3) include budget formulation

consultation on programs that affect American Indians and Alaskan Natives and (4) mandate consultation with Tribal Governments in development of State and Local Education Plans.

The policy should also require that a system of accountability of the State Education Agencies (SEAs) and Local Education Agencies (LEAs) to Tribal Governments be included, that the SEAs and LEAs shall be required to submit annual reports on the school performance and academic achievement of an Indian student population by tribal affiliation. By adding this section to the law, it will strengthen and complement the Department of Education in its implementation of President Clinton's Executive Order on Tribal Consultation.

Retention of Previous Programs; Development of a Funding Plan.

The Indian Education Act programs authorized in the last reauthorization of the ESEA in 1994 should be retained but include language that will require the Department of Education to develop a funding plan to be included in the President's budget request for these programs. These programs include both the Formula Grants to LEAs and the Special Programs for Indian Children including Demonstration Grants, Fellowships for Indian Students, Special Programs for Indian Adults, National Research Activities, Gifted and Talented Program and especially, Grants to Tribes for Education Administrative Planning and Development.

Reestablishment of educational personnel development and teacher training programs. Acoma supports reestablishment of an educational personnel development and teacher training program as found in the original Indian Education Act. We believe that the Department of Education Office of Indian Education should be providing contracts to support partnership initiatives of Tribal Governments with Universities and LEAs to establish accredited teacher-training programs. Within our local school district, we have only four teachers that are Indian out of a total of 250 teachers for K-12 grades. Out of these four, only two are Acoma. We would like to see more of our Acoma people trained for teaching positions. We believe that teachers serve as critical career role models for our children and youth. We believe our people are capable of training and working in capacities beyond school auxiliary positions such as bus drivers, kitchen personnel and custodial positions. It is estimated that over a third (35%) of these school auxiliary positions are filled with our Indian people.

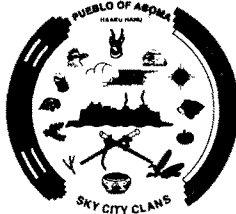
Funding Indian Education - A Trust Responsibility. The Federal Government has a unique trust responsibility to American Indians

and Alaskan Natives. We believe that supporting Indian education is a Federal trust responsibility and that education is a moral responsibility of the Federal Government.

To meet this obligation, there needs to be a general increase in Indian education funding. At Acoma, we have received the same funding level for our higher education students for the past three years. Cost of tuition and fees, room and board, books and supplies, transportation to schools and personal expenses such as childcare have increased for our students while our funding level has remained at status quo. We have more and more students coming out of secondary education who are motivated to go on to college and seek degrees in Education, Business Administration, Hospital Administration, Communication and Journalism, Speech and Hearing, Anthropology, various Medical fields, Music and Art Education, etc. Our present funding level cannot meet the student needs for college education. We estimate that we might be meeting only 1/3 of our student needs, we would like to be able to meet 100% of the higher education student needs.

Education is the key to the future of Acoma and, indeed, of all Indian people. We ask that the Congress stand firmly with us on this important matter by providing us with the tools to be able to achieve a life of self-esteem and self-sufficiency.

Again, I thank you for this opportunity to provide you with this testimony on behalf of the Pueblo of Acoma.



P.O. BOX 309
ACOMA, NEW MEXICO 87034

PUEBLO OF ACOMA
OFFICE OF THE GOVERNOR

TELEPHONE 505/552-6604
FAX 505/552-6600

November 12, 1999

The Honorable Ben Nighhorse Campbell
United State Senate
Committee on Indian Affairs
Washington, DC 20510-6450

Dear Senator Campbell:

Thank you, for your letter and the supplemental questions for our testimony to the SCIA on ESEA.

- (1) At the present time, how much of your LEA's budget depends on Title VIII Impact Aid? How much does the State contribute to your LEA's budget? Do you know how much money your LEA receives in Title IX funds?

The Grants/Cibola County Schools expect to receive \$675,684.44 from Title VIII Indian Education funds and \$134,467 in Title VIII Special Education funds. The State of New Mexico has reduced the amount of funding due the district under New Mexico's equalization formula by \$506,763.33 or 75% of the funding received from Title VIII Indian Education funds. The remaining contribution to Grants/Cibola County School's funding is \$15,899,887. The District will receive \$139,000 in Title IX funds.

- (2) Under Sec. 9117(c) Title IX payments can be reduced if the LEA and the State do not contribute at least 90% of the fiscal money they provided in the previous year. Does this required "maintenance" of fiscal effort impede your LEA's eligibility to receive Title IX funds?

At the present time the required "maintenance" under Sec. 9117(c) Title IX does not impede the districts eligibility to receive Title IX funds.

- (3) Sec. 8004 requires LEA's to involve parents and Indian tribes in developing programs and activities to be sponsored with Title VIII funds. How does your local LEA involve your Pueblo and it's parents in the development of programs and activities?

The Grants/Cibola County School District involves parents and Indian Tribes in developing programs, activities, and yearly review of the Indian Policy and Procedures (IPP) for the Title IX program through a Parent Advisory Committee (PAC). PAC meeting are held one a month through out the year. Per IPP agreements the Grants/Cibola Superintendent and Administrative are required to present reports of Indian Education to the Pueblo of Acoma Tribal Council twice a year. One regular Grants/Cibola County School Board meeting is held on the Pueblo of Acoma reservation.

- (4) Does the Pueblo of Acoma support forward funding for Impact Aid funds? How would forward funding improve distribution of Impact Aid funds?

Yes, Pueblo of Acoma supports forward funding. Presently Impact Aid funding is received in the middle of a school year, if forward funding is available, better planning and implementation of the Indian programs will happen.

Thank you again for making it possible for Pueblo of Acoma to present testimony during the ESES hearings for its Acoma students.

Sincerely,

PUEBLO OF ACOMA



Lloyd D. Tortalita
Governor

Written Testimony of the Navajo Nation Relative to Title 20, Subchapter VIII, Impact Aid (20 U.S.C. §7701 et seq.) and Title IX, of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.), Senate Indian Affairs Committee Oversight Hearing, October 27, 1999

Mr. Chairman, honorable members of the Senate Indian Affairs Committee, the Navajo Nation appreciates this opportunity to testify relative to Title 20, Subchapter VIII, Impact Aid (20 U.S.C. §7701 et seq.) and Title IX, of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.). The primary recommendation which the Navajo Nation makes is for repeal of the provisions of 20 U.S.C. §7709, which allow states to take credit for federal Impact Aid funds and reduce state financial aid to local educational agencies on the basis of receipt of Impact Aid funds from the federal government. The provisions of 20 U.S.C. §7709 have historically been used by the states of Arizona and New Mexico to reduce the amount of state financial assistance provided to local educational agencies serving Navajo students, resulting in severe financial hardships to these local educational agencies, inability of these local educational agencies to construct, maintain, and renovate school facilities, and loss of funds which would otherwise be used to provide educational services to Navajo students.

Secondly, the Navajo Nation would like to take this opportunity to recommend against the elimination of a number of programs contained within Title IX, which would be eliminated from Title IX under the draft of proposed House amendments which the Navajo Nation has reviewed. While some of these programs have not been funded by Congress, and others have lacked appropriations for a number of years, these programs are needed by Navajo students and the Navajo Nation. The Navajo Nation notes the maintenance of current Title IX programs in the draft Senate bill and makes a few recommendations for changes in the draft Senate bill.

**I. Impact Aid, Title VIII, ESEA, Title 20, Subchapter VIII, Impact Aid
(20 U.S.C. §7701 et seq.)**

The purpose of the Impact Aid program, as stated in 20 U.S.C. §7701 is to fulfill the federal responsibility to provide financial assistance to local educational agencies that educate students who reside on federal property and that need special assistance with capital expenditures for construction activities because of the enrollments of substantial numbers of children who reside on Federal lands. 20 U.S.C. §7704 requires local educational agencies which receive Impact Aid funds under 20 U.S.C. §7703 on the basis of enrollment of Indian children to provide opportunities to Indian tribes and the parents of such Indian children for consultation and input on the use of such Impact Aid funds. However, the provisions of 20 U.S.C. §7709 destroy the potential favorable effect of the receipt of Impact Aid funding by local educational agencies and the required consultation, by allowing states to reduce the amount of state financial assistance to such local educational agencies by nearly the entire amount received in Impact Aid funds. 20 U.S.C. §7709 allows the states to accomplish this end by seeking certification by the Secretary of Education that the state has a method of equalizing per-pupil revenues or expenditures.

Written Testimony of Navajo Nation
Senate Indian Affairs Committee
Oversight Hearing
October 27, 1999
Page 2

At this time, only three states continue to utilize 20 U.S.C. §7709 to reduce the amount of state financial assistance to local educational agencies; New Mexico, Kansas and Alaska. The State of Arizona ceased its retention of Impact Aid basic support funds in the middle 1990s when a coalition of federally impacted local educational agencies, including those serving portions of the Navajo Nation, successfully challenged the State of Arizona's equalization formula. The use of 20 U.S.C. §7709 by the State of New Mexico continues to negatively affect the delivery of scarce educational resources to Navajo students being served by local educational agencies, and to place these local educational agencies under severe hardships, both in the areas of operations and capital expenditures.

The best example of a local educational agency severely and negatively affected by the operation of 20 U.S.C. §7709 is the Gallup-McKinley County School District in western New Mexico. The Gallup-McKinley County School District covers 5,000 square miles and is the largest district in the continental United States. Of this land base, sixty-one percent (61%) is Navajo Indian Country, federal lands which cannot be subjected to property tax. The enrollment of the Gallup-McKinley County School District is roughly 15,000 students, of which approximately seventy five percent (75%) are Native American and fifteen percent (15%) are Hispanic. Over fifty five percent (55%) of students within the Gallup-McKinley County School District are Navajos, residing on the Navajo Nation.

In the 1996-97 School Year, the Gallup-McKinley County School District was eligible to receive \$18.9 million in Impact Aid basic support funds and generated such funding within the State of New Mexico. However, due to the operation of the equalization formula within the State of New Mexico, the Gallup-McKinley County School District received only the benefit of \$948,000 of the Impact Aid basic support funds. This extremely inequitable allocation was due to the accompanying reduction in state educational aid to which the State of New Mexico subjected the Gallup-McKinley School District on the basis of its receipt of Impact Aid funds. In effect, the operation of 20 U.S.C. §7709 allowed the State of New Mexico to supplant state funds with federal funds in the provision of state educational assistance to the Gallup-McKinley County School District. This supplanting of state funds has been ongoing since the implementation of 20 U.S.C. §7709. In the 1976-77 School Year, the local property tax revenues were \$36,064,952 and Impact Aid funds amounted to \$19,960,965. This has progressed to a situation wherein local tax revenues have been reduced to \$7,096,083 and Impact Aid funds have increased to \$38,052,116, see attached chart.

Written Testimony of Navajo Nation
Senate Indian Affairs Committee
Oversight Hearing
October 27, 1999
Page 3

While the State of New Mexico equalization plan supposedly equalizes expenditures, this facial equalization ignores the fact that capital expenditures are excluded from the equalization formula, leading to severe inequities for the Gallup-McKinley County School District. The Gallup-McKinley County School District is bonded to its capacity but cannot meet its facilities construction, maintenance and renovation needs, due to its inability to apply property tax to the federally-owned lands within the district. All available funds are applied to attempt to address the school construction needs of the district, leaving crucial maintenance and renovation issues unaddressed, as well as other capital expenditures, including school transportation vehicles. The State of New Mexico does not generally fund capital outlay for local educational agencies, which must address these needs through local property taxes. As local educational capital outlay expenditures within the State of New Mexico are left to local property tax revenues, the Gallup-McKinley County School District cannot possibly achieve equity in the areas of facilities construction, maintenance and renovation and other capital outlay, while the State of New Mexico continues to reduce state educational assistance to the district by reducing such assistance on the basis of Impact Aid funds generated by the Gallup-McKinley County School District.

These negative effects impact directly on Navajo students who are intended to be the beneficiaries of the Impact Aid funds which they generate. Navajo students in the Gallup-McKinley County School District go to learn in old, dilapidated school facilities, which the school district simply cannot afford to replace, renovate or even adequately maintain. Our Navajo students spend their school days in classrooms contained in 225 portable buildings. When the Gallup-McKinley County School District spends operational funds on capital expenditures, the accompanying reduction means less books, supplies and materials for use in the education of Navajo students. The supposed equalization of revenues or expenditures set forth in 20 U.S.C. §7709 and implemented in the State of New Mexico has never resulted in the true equalization of revenues or expenditures for Navajo students and continues to deny Navajo students equity in educational facilities and services. Average per pupil expenditures across the United States are approximately \$6,100; but average per pupil expenditures in New Mexico school districts amount to less than \$3,500. The equalization of per pupil expenditures at this level will never allow federally-impacted school districts in New Mexico to improve relative to their more affluent counterparts.

Written Testimony of Navajo Nation
 Senate Indian Affairs Committee
 Oversight Hearing
 October 27, 1999
 Page 4

While the loss of Impact Aid fund benefit for capital outlay is a severe problem, it is not the only hardship worked on the Gallup-McKinley County School District and the Navajo students by the operation of the Impact Aid equalization provisions. Impact Aid funds can be utilized for both capital and operating expenses, at the discretion of the local educational agency. The loss of the benefit of these Impact Aid funds through the reduction of state educational assistance prevents the Gallup-McKinley County School District from providing language acquisition, extended school day, transportation and other supplemental services which are in dire need for Navajo students. Such funds could also be applied to address salary issues leading to unacceptably high teacher turnover rates and inadequate housing for teachers residing on Navajo lands. Currently, students within the Gallup-McKinley School District test substantially under the state norm in standardized testing and are subject to a drop-out rate of 35-45% per graduating class.

The Education Committee and the Intergovernmental Relations Committee of the Navajo Nation Council have recommended to the United States Congress the repeal of the equalization provisions of Impact Aid set forth at 20 U.S.C. §7709. These resolutions are attached to this testimony. The Navajo Nation again recommends that the equalization provisions of the Impact Aid law be repealed in order to allow the Impact Aid funds to be properly applied to the purpose stated in 20 U.S.C. §7701, "to fulfill the Federal responsibility to assist with the provision of educational services to federally connected children ... and to help such children meet challenging state standards."

II. Title IX of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.)

The Navajo Nation is at a critical juncture in the development of the educational system within Navajo Indian Country. Increasingly, the Navajo Nation is being constantly faced with new education and education-related issues which test the existing capacity of the Division of Diné Education and the Education Committee of the Navajo Nation Council to address these critical matters. The growth of the tribally-controlled contract and grant school systems within the Navajo Nation, as well as new initiatives at the state level, including the establishment of charter schools in the State of Arizona.

The Navajo Nation is supportive of the maintenance of all currently authorized programs set forth in Title IX of the Elementary and Secondary Education Act of 1965. While some of the programs contained in Title IX have not recently been funded, including the provisions relative to establishment of tribal departments of education, the purposes and objectives set forth in these programs continue to be valid and important in the delivery of education and education-related services to Navajos.

Written Testimony of Navajo Nation
 Senate Indian Affairs Committee
 Oversight Hearing
 October 27, 1999
 Page 5

The Navajo Nation is pleased to see that the draft of the proposed Senate version of the Title IX reauthorization legislation maintains the existing programs within Part A - Indian Education, and in some areas augments the educational services provided for within Title IX. In particular, the amendments relative to authorized services and activities for the formula grants to local educational agencies would specify as particular services and activities those "that promote the incorporation of culturally responsive teaching and learning strategies into the educational program of the local educational agency", "activities that incorporate American Indian and Alaska Native specific curriculum content, consistent with State standards, into the curriculum used by the local educational agency", "activities to promote coordination and collaboration between tribal, Federal, and State public schools in areas that will improve American Indian and Alaska Native student achievement", and "family literacy services." See, proposed Section 9115, draft Senate ESEA Reauthorization Bill, and 20 U.S.C. §7815. The Navajo Nation recommends one change to the proposed amendments to 20 U.S.C. §7815 in the area of particular services and activities. The Navajo Nation recommends that the language in Section 9115(b)(9) be changed to authorize "activities that incorporate American Indian and Alaska Native specific curriculum content, to the maximum extent consistent with State standards, into the curriculum used by the local educational agency."

The Navajo Nation notes the addition of more specific language relative to the inclusion of tribal grant and contract schools within Section 9116(g), Student Eligibility Forms and student court periods within Section 9116(h). See, 20 U.S.C. §7816. The Navajo Nation is concerned that the methods of student count set forth in the proposed amendment not be utilized to undercount the number of students eligible for assistance under the formula grant program, and that students not be excluded from participation in the program. However, the amendment language as currently drafted appears to be drafted generally enough to allow for full participation. The of language relative to timing of child counts set forth in Section 9116(h) would not appear in its present to have a negative effect on Navajo students to be counted for purposes of the formula grant.

The Navajo Nation is concerned relative to the reduction in administrative costs available under the special programs and projects to improve educational opportunities for Indian children under Section 9121(e). See, 20 U.S.C. §7831. There is currently no language within the statutory section which limits the administrative costs chargeable under the section. While the Navajo Nation has a modest indirect cost rate of 15.2%, even these necessary costs would not be recoverable in Navajo Nation administration of such a special program or project. The Navajo Nation strongly recommends the elimination of this provision from the proposed amendments.

The Navajo Nation notes the addition of specific language within Section 9122(I), Professional Development for inservice training for teachers of Indian children. See, 20 U.S.C. §7832. The addition of this grant program could reasonably be expected to increase the provision of high quality inservice training and is supported by the Navajo Nation.

Written Testimony of Navajo Nation
Senate Indian Affairs Committee
Oversight Hearing
October 27, 1999
Page 6

As noted above, the Navajo Nation is pleased that the draft Senate bill maintains provisions for tribal departments of education in Section 9125. However, the Navajo Nation is concerned that funding authorized for this grant program has been lacking since the inception of the provision. See, 20 U.S.C. §7835. The reauthorization language maintains the modest level of \$3,000,000 for appropriations under this provision. In light of the increased needs of Indian tribes in the areas of educational management, administration, and service delivery, the Navajo Nation recommends that the Senate Indian Affairs Committee strongly support the appropriation of funds for this grant program.

Mr. Chairman, thank you for this opportunity to provide testimony to the Senate Indian Affairs Committee. The Navajo Nation appreciates its participation in the legislative process on a Government-to-Government basis and will continue to monitor and address the ESEA amendments as the bills are considered in both houses of Congress.

RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL

Supporting the Gallup-McKinley County School District in
Its Efforts to Ensure That It Directly Receives the Public
Law 103-382 Title VIII Funds Without Being Subjected to the
State of New Mexico Crediting Ninety-Five Percent (95%) of
Said Funds; Requesting the United States Congress to Repeal
Section 8009 of Public Law 103-382 So That All Federally
Impacted Schools Receive Their Funds Directly

WHEREAS:

1. Pursuant to 2 N.N.C. §§821, 822(B) and 824(B)(2), the Intergovernmental Relations Committee is established as a standing committee of the Navajo Nation Council with the purpose of ensuring the presence and voice of the Navajo Nation and the authority to assist and coordinate all requests for information, appearances, and testimonies relating to proposed county, state and federal legislation impacting the Navajo Nation; and

2. Pursuant to 10 N.N.C. §104(A), the Navajo Nation has an inherent right to exercise its responsibility to the Navajo People for their education by prescribing and implementing educational policies applicable to all schools within the Navajo Nation and all educational programs receiving significant funding for the education of Navajo youth or adults. At the same time, the Navajo Nation recognizes the legitimate authority of the actual education provider, whether state, federal, community controlled or private. The Navajo Nation commits itself, whenever possible, to work cooperatively with all education providers serving Navajo youth or adults or with responsibilities for serving Navajo students to assure the achievement of the educational goals of the Navajo Nation established through the Navajo Nation Education Policies and applicable Navajo Nation laws; and

3. Pursuant to Public Law 103-382, Title VIII, (better known as Impact Aid), the purpose of Impact Aid is to fulfill the United States Government's responsibility to assist financially with the provision of educational services to federally impacted children and because the existence of federally-owned lands within local educational agencies reduces traditional revenues used for educational placing a financial burden on the local educational agencies serving these areas. Such federally owned areas include, but are not limited to, the Navajo Nation in the States of Arizona, New Mexico and Utah; and

4. Pursuant to Public Law 103-382, Title VIII, in 47 of the 50 states within the United States the local educational agencies receive directly their Impact Aid funds, and the school boards of the school districts determine the use of the funds; the direct funding eliminates bureaucracy and regulating the funds. However, Section 8009 of Public Law 103-832, Title VIII, allows the States to retain a percentage of Impact Aid basic support funds, provided that the Secretary of the Department of Health and Human Services of the United States Government certifies that the State has in effect an equalization plan for provision of free appropriate public education among the local educational agencies in such State; and

5. The Gallup-McKinley County School District, Gallup, New Mexico, covers an area of 4,957 square miles of which sixty-one percent (61%) is on the Navajo Nation; Gallup-McKinley County School District is the largest public school district in the State of New Mexico by land base and is the third largest public school district in the State of New Mexico by student population. Over seventy-three percent (73%) of the students enrolled in the school district are American Indian, Eskimo or Aleut. Over fifty-five percent (55%) of Gallup-McKinley County School District's average daily attendance are Indians that reside on the Navajo Nation. In school year 1996-1997, the Gallup-McKinley County School District was eligible to receive \$18.9 million in Impact Aid basic support funds; however, said school district only received \$948,000 of the Impact Aid basic support funds. The reason Gallup-McKinley School District only received five percent (5%) of its Impact Aid basic support funds which it generated is due to the fact that the State of New Mexico retained ninety-five percent (95%) of said funds; and

6. The State of Arizona had retained a portion of the Impact Aid basic support funds generated by the Federally impacted local educational agencies over the objections of those local educational agencies. In the early 1990's, the Federally impacted local educational agencies in the State of Arizona challenged the State of Arizona's ability to retain a portion of the Impact Aid funds by requesting the United States Government to de-certify the State of Arizona's equalization of expenditures. The Federal impacted local educational agencies in the State of Arizona were successful in challenging the State's equalization plan and now directly receives from the United States government their Impact Aid basic support funds without retention by the State of Arizona; and

7. Only three states in the United States continue to opt in using Section 8009 of the Impact Aid law; New Mexico, Kansas and Alaska. The other two states may treat their Federally impacted school favorably; however, the State of New Mexico retains a significant amount of the Impact Aid basic support funds which negatively impacts the Gallup-McKinley County School District. While the local tax rate in McKinley County has decreased which

does not enable the county taxpayers to generate sufficient tax dollars to pay for Gallup-McKinley County School District capital outlay projects, the Impact Aid basic support funds generated by the Gallup-McKinley County School District increased the past ten years. Although the Impact Aid basic support funds has increased over a ten year period, the Gallup-McKinley County School District continues to be denied the full Impact Aid basic support funds it should receive. If the Gallup-McKinley County School District received one hundred percent (100%) of the Impact Aid basic support funds directly, the School Board can allocate all or a portion of the Impact Aid basic support funds to address its capital outlay needs in the school district; and

8. The Intergovernmental Relations Committee determines that it is in the best interest of Navajo students attending school in Federally impacted local educational agencies that Section 8009 of the Impact Aid law be repealed to ensure that the Federally impacted schools directly receive their Impact Aid basic support funds.

9. By Resolution ECMA-31-98, the Education Committee of the Navajo Nation Council supports and recommends to the Intergovernmental Relations Committee the Gallup-McKinley County School District in its efforts to ensure that it directly receives the Public Law 103-382, Title VIII, Impact Aid basic support funds without being subjected to the State of New Mexico retaining ninety-five percent (95%) of said funds, attached as Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT:

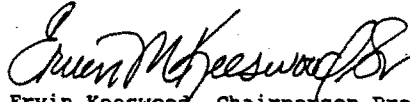
1. The Intergovernmental Relations Committee of the Navajo Nation Council hereby supports the Gallup-McKinley County School District in its efforts to ensure that it directly receives the Public Law 103-382, Title VIII, Impact Aid basic support funds without being subjected to the State of New Mexico retaining ninety-five percent (95%) of said funds.

2. The Intergovernmental Relations Committee of the Navajo Nation Council further requests the United States Congress to repeal Section 8009 of Public Law 103-382 so that the Federally impacted local educational agencies on the Navajo Nation will directly receive their Impact Aid basic support funds.

3. The Intergovernmental Relations Committee of the Navajo Nation Council further recommends that the Intergovernmental Relations Committee of the Navajo Nation Council support the Gallup-McKinley County School District and request the United States Congress to repeal Section 8009 of Public Law 103-382.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 6 in favor, 0 opposed and 0 abstained, this 26th day of March, 1998.

A handwritten signature in cursive script, reading "Ervin M. Keeswood".

Ervin Keeswood, Chairperson Pro Tempore
Intergovernmental Relations Committee

Motion: Young Jeff Tom
Second: Julia Mose

**RESOLUTION OF THE
INTERGOVERNMENTAL RELATIONS COMMITTEE
OF THE NAVAJO NATION COUNCIL**

Approving the Navajo Nation's Responses to Supplemental Questions from the Senate Committee on Indian Affairs Relative to Title 20, United States Code, Chapter 70, Subchapter VIII - Impact Aid (20 U.S.C.A. §7701 et seq.) and Title IX of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.)

WHEREAS:

1. Pursuant to 2 N.N.C. §821, the Intergovernmental Relations Committee is a standing committee of the Navajo Nation Council; and
2. Pursuant to 2 N.N.C. §824(B)(2), the Intergovernmental Relations Committee is authorized to assist and coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation; and
3. The United States Senate Committee on Indian Affairs, by letter dated October 15, 1999 from Chairman Ben Nighthorse Campbell to Navajo Nation President Kelsey A. Begaye, invited the Navajo Nation to present testimony at an oversight hearing of the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization, held at 9:30 a.m. on Wednesday, October 27, 1999; and
4. The Education Committee, by its Resolution No. ECO-123-99, and the Intergovernmental Relations Committee, by its Resolution No. IGRO-230-99, approved written testimony of the Navajo Nation, which was presented by Wallace Charley, Vice-Chairman, Education Committee at the October 27, 1999 hearing; and
5. The United States Senate Committee on Indian Affairs, by letter dated November 1, 1999 from Chairman Ben Nighthorse Campbell to Wallace Charley, Vice-Chairman, Education Committee, copy attached as Exhibit A, requested the Navajo Nation to provide responses to supplemental questions from the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization; and
6. The Education Committee, by its Resolution No. ECN-124-99, attached hereto as Exhibit B, has approved and recommended to the Intergovernmental Relations Committee the written responses to the supplementary questions from the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization; and

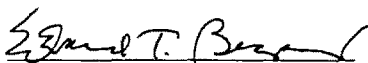
7. The Intergovernmental Relations Committee finds that the presentation of the written responses to the supplementary questions from the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization would be in the best interests of the Navajo Nation and the Navajo children and families served through such programs.

NOW THEREFORE BE IT RESOLVED:

The Intergovernmental Relations Committee hereby approves the written responses to the supplementary questions from the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization.

CERTIFICATION

I hereby certify that the foregoing Resolution was duly considered by the Intergovernmental Relations Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Arizona at which a quorum was present and that the same was passed by a vote of 8 in favor, 0 opposed, and 0 abstained, this 15th day of November, 1999.



Chairperson
Intergovernmental Relations Committee

Motion: George Tolth
Second: Edward Jim

RESOLUTION OF THE
EDUCATION COMMITTEE
OF THE NAVAJO NATION COUNCIL

Supporting the Gallup-McKinley County School District in Its Efforts to Ensure that It Directly Receives the Public Law 103-382, Title VIII, Funds Without Being Subjected to the State of New Mexico Crediting Ninety-Five Percent (95%) of Said Funds; Requesting the United States Congress to Repeal Section 8009 of Public Law 103-382 so that all Federally Impacted Schools Receive their Funds Directly; and Recommending the Intergovernmental Relations Committee Support and Request the Same

WHEREAS:

1. Pursuant to 2 N.N.C. §§481 and 484 (B)(6), the Education Committee is established and continued as a standing committee of the Navajo Nation Council with the authority to represent the Navajo Nation in consultation with federal, state and local officials regarding any proposed changes in educational programs, including additions, deletions, school closures, consolidations and the like; and

2. Pursuant to 10 N.N.C. §104(A), the Navajo Nation has an inherent right to exercise its responsibility to the Navajo People for their education by prescribing and implementing educational policies applicable to all schools within the Navajo Nation and educational programs receiving significant funding for the education of Navajo youth or adults. At the same time, the Navajo Nation recognizes the legitimate authority of the actual education provider, whether state, federal, community controlled or private. The Navajo Nation commits itself, whenever possible, to work cooperatively with all education providers serving Navajo youth or adults or with responsibilities for serving Navajo students to assure the achievement of the educational goals of the Navajo Nation established through the Navajo Nation Education Policies and applicable Navajo Nation laws; and

3. Pursuant to Public Law 103-382, Title VIII, (better known as Impact Aid), the purpose of Impact Aid is to fulfill the United States Government's responsibility to assist financially with the provision of educational services to federally impacted children and because the existence of federally-owned lands within local educational agencies reduces traditional revenues used for education placing a financial burden on the local educational agencies serving these areas. Such federally owned areas include, but are not limited to, the Navajo Nation in the States of Arizona, New Mexico and Utah; and

4. Pursuant to Public Law 103-382, Title VIII, in 47 of the 50 states within the United States the local educational agencies receive directly their Impact Aid funds, and the school

boards of the school districts determine the use of the funds; the direct funding eliminates bureaucracy and regulating the funds. However, Section 8009 of Public Law 103-382, Title VIII, allows the States to retain a percentage of Impact aid basic support funds, provided that the Secretary of the Department of Health and Human Services of the United States Government certifies that the State has in effect an equalization plan for provision of free appropriate public education among the local educational agencies in such State; and

5. The Gallup-McKinley County School District, Gallup, New Mexico, covers an area of 4,957 square miles of which sixty one percent (61%) is on the Navajo Nation; Gallup-McKinley County School District is the largest public school district in the State of New Mexico by land base and is the third largest public school district in the State of New Mexico by student population. Over seventy three percent (73%) of the students enrolled in the school district are American Indian, Eskimo or Aleut. Over fifty five percent (55%) of Gallup McKinley County School District average daily attendance are Indians that reside on the Navajo Nation. In school year 1996-1997, the Gallup-McKinley County School District was eligible to receive \$18.9 million in Impact Aid basic support funds; however, said school district only received \$948,000 of the Impact Aid basic support funds. The reason Gallup-McKinley School District only received five percent (5%) of its Impact Aid basic support funds which it generated is due to the fact that the State of New Mexico retained ninety five percent (95%) of said funds; and

6. The State of Arizona had retained a portion of the Impact Aid basic supports funds generated by the Federally impacted local educational agencies over the objections of those local educational agencies. In the early 1990's, the Federally impacted local educational agencies in the State of Arizona challenged the State of Arizona's ability to retain a portion of the Impact Aid funds by requesting the United States Government to de-certify the State of Arizona's equalization of expenditures. The Federal impacted local educational agencies in the State of Arizona were successful in challenging the State's equalization plan and now directly receive from the United States government their Impact Aid basic support funds without retention by the State of Arizona; and

7. Only three States in the United States continue to opt in using Section 8009 of the Impact Aid law; New Mexico, Kansas and Alaska. The other two States may treat their Federally impacted schools favorably; however, the State of New Mexico retains a significant amount of the Impact Aid basic support funds which negatively impacts the Gallup-McKinley County School District. While the local tax rate in McKinley County has decreased which does not enable the county tax payers to generate sufficient tax dollars to pay for Gallup-McKinley County School District capital out lay projects, the Impact Aid basic support

funds generated by the Gallup-McKinley County School District increased the past ten years. Although the Impact Aid basic support funds has increased over a ten year period, the Gallup-McKinley County School District continues to be denied the full Impact Aid basic support funds it should receive. If the Gallup-McKinley County School District received one hundred percent (100%) of the Impact Aid basic support funds directly, the School Board can allocate all or a portion of the Impact Aid basic support funds to address its capital out lay needs in the school district; and

8. The Education Committee determines that it is in the best interest of Navajo students attending school in Federally impacted local educational agencies that Section 8009 of the Impact Aid law be repealed to ensure that the Federally impacted schools directly receive their Impact Aid basic support funds.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Education Committee of the Navajo Nation Council hereby supports the Gallup-McKinley County School District in its efforts to ensure that it directly receives the Public Law 103-382, Title VIII, Impact Aid basic support funds without being subjected to the State of New Mexico retaining ninety-five percent (95%) of said funds.

2. The Education Committee of the Navajo Nation Council further requests the United States Congress to repeal Section 8009 of Public Law 103-382 so that the Federally impacted local educational agencies on the Navajo Nation will directly receive their Impact Aid basic support funds.

3. The Education Committee of the Navajo Nation Council further recommends that the Intergovernmental Relations Committee of the Navajo Nation Council support the Gallup McKinley County School District and request the United States Congress to repeal Section 8009 of Public Law 103-382.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Education Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 5 in favor, 0 opposed and 0 abstained this 20th day of March, 1998.

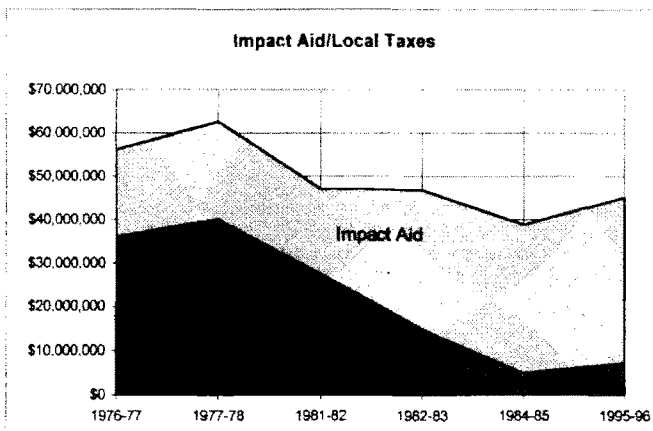
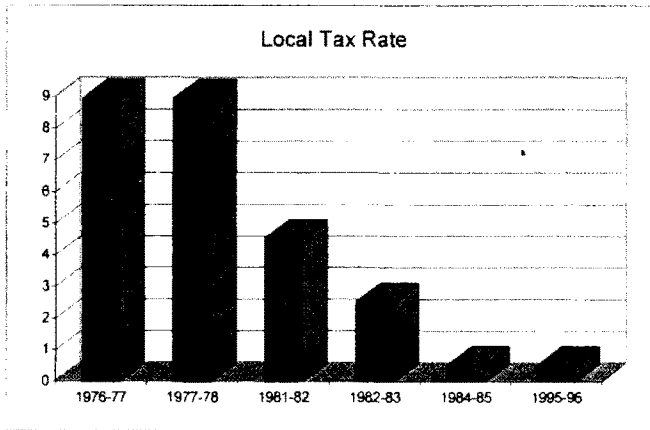
Leonard Chee
Leonard Chee, Chairperson
Education Committee

Motion: Julia M. Mose
Second: Wallace Charley

Supplanting of Property Tax with Impact Aid in New Mexico

	1976-77	1977-78	1981-82	1982-83	1984-85	1995-96
Local Tax Rate	8.925	8.925	4.5	2.5	0.5	0.5

	1976-77	1977-78	1981-82	1982-83	1984-85	1995-96
Local Tax Revenue	\$36,064,952	\$40,009,175	\$27,430,210	\$14,609,293	\$4,811,234	\$7,096,083
Impact Aid	\$19,960,965	\$22,629,091	\$19,653,627	\$32,187,465	\$34,009,741	\$38,052,116



RESOLUTION OF THE
EDUCATION COMMITTEE OF THE
NAVAJO NATION COUNCIL

Approving and Recommending to the Intergovernmental Relations Committee the Navajo Nation's Responses to Supplemental Questions from the Senate Committee on Indian Affairs Relative to Title 20, United States Code, Chapter 70, Subchapter VIII - Impact Aid (20 U.S.C.A. §7701 et seq.) and Title IX of the Elementary and Secondary Education Act of 1965 - Indian, Native Hawaiian, and Alaska Native Education (20 U.S.C. §7801 et seq.)

WHEREAS:

1. Pursuant to 2 N.N.C. §§481 and 484(B)(6), the Education Committee is a standing committee of the Navajo Nation Council with the authority to represent the Navajo Nation in consultation with federal, state and local officials regarding any proposed changes in educational programs; and
2. The United States Senate Committee on Indian Affairs, by letter dated October 15, 1999, from Chairman Ben Nighthorse Campbell to Navajo Nation President Kelsey A. Begaye, invited the Navajo Nation to present testimony at an oversight hearing of the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization, held at 9:30 a.m. on Wednesday, October 27, 1999; and
3. The Education Committee of the Navajo Nation Council, by its Resolution ECO-123-99, and the Intergovernmental Relations Committee, by its Resolution IGRO-230-99, approved written testimony of the Navajo Nation, which was presented by Wallace Charley, Vice-Chairman, Education Committee at the October 27, 1999 hearing; and
4. The United States Senate Committee on Indian Affairs, by letter dated November 1, 1999, from Chairman Ben Nighthorse Campbell to Wallace Charley, Vice-Chairman, Education Committee, copy attached as Exhibit "A", requested the Navajo Nation to provide responses to supplemental questions from the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization; and
5. The Education Committee of the Navajo Nation Council finds that the presentation of the written responses to the supplementary questions from the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization would be in the best interests of the Navajo Nation and the Navajo children and families served through such programs.

ECN-124-99

NOW, THEREFORE, BE IT RESOLVED THAT:

The Education Committee of the Navajo Nation Council hereby approves and recommends to the Intergovernmental Relations Committee the written responses to the supplementary questions from the Senate Committee on Indian Affairs relative to the Elementary and Secondary Education Act (ESEA) Reauthorization.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Education Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, on this 4th day of November, 1999.



Wallace Charley, Vice Chairperson
Education Committee
NAVAJO NATION COUNCIL

Motion: Harry Jackson
Second: James Bilagody

**Navajo Nation Response to Supplemental Questions
Senate Committee on Indian Affairs Oversight Hearing
Reauthorization of the Elementary and Secondary Education Act (ESEA)
October 27, 1999**

1) Your written testimony states that the 31-day timeframes proposed under this bill to obtain accurate student counts will be problematic in Indian country. Can you explain your position on this?

Response: The position of the Navajo Nation is that the amendment relative to student count periods contained within Section 9116(h) would not appear to be problematic if it is administered in a manner which is intended to maximize the number of Navajo students served by the grant. In particular, while the provisions of Section 9116(b)(1)(A) set forth detailed information which is mandated to be included on a form maintained in a file for each Indian child to be served under the grant, this information may not always be readily available for each such Indian child within the proposed 31-day student count period. Potential exclusion of an Indian child would be mitigated by Section 9116(b)(2), which sets forth minimum information which would allow counting of the Indian child for purposes of the grant. With the inclusion of Section 9116(b)(2) in the statute, the count period of 31 days, set forth within Section 9116(h) would appear to be sufficient.

2) Is the Navajo Nation in support of the continued authorization of recently unfunded programs in Title IX inclusive of the Gifted and Talented Programs, Fellowships and Adult Education or does the Navajo Nation support the Administration's proposal to block grant such programs within larger existing Department of Education programs?

Response: The Navajo Nation appreciates the efforts of the Clinton administration to obtain funding for Indian education programs, but supports Congressional funding of the separate programs currently contained within Title IX, particularly the program for establishment of tribal departments of education. The elimination of these programs and the substitution of a Department of Education block grant for similar purposes could have the effect of diluting the purposes for which these programs were originally established and providing no ready manner in which the Indian nations and Congress could readily determine whether the needs are being met.

3) Does the Navajo Nation have a standard it uses to measure the achievement of Navajo students? Does it apply the same to all Navajo students, whether they go to school at BIA schools, tribal schools or LEA public schools? If so, how are Navajo students doing in comparison with students in New Mexico, Arizona, Utah and Colorado?

Response: The Navajo Nation does not currently have a standard which it uses to measure the achievement of Navajo students. It should be noted by the Committee that there are grant provisions within Title III of the ESEA which, if funded, would provide means for the establishment of alternative academic standards.

4) Your testimony states that the Tribe participated in a lawsuit that challenged the equalization formula used by Arizona. Has the Tribe participated in any discussions with LEAs concerning the review of New Mexico's equalization formula and how it might be changed to produce more equitable results for LEAs?

Response: The Navajo Nation's written testimony indicated that the State of Arizona's utilization of the equalization provisions of 20 U.S.C. §7709 ceased its retention of Impact Aid basic support funds in the middle 1990s when a coalition of federally impacted local educational agencies, including those serving portions of the Navajo Nation, successfully challenged the State of Arizona's equalization formula. The Navajo Nation was not a party to the lawsuit.

The Navajo Nation has discussed the negative impact of New Mexico's equalization formula with representatives of the LEAs and the beneficial effect which repeal of 20 U.S.C. §7709 would have on equitable funding of state education for Navajo students, in particular with the Gallup McKinley County School District and to a lesser degree, the Central Consolidated School District. However, the Navajo Nation has not been invited and has not participated in any discussions with the State Department of Education relative to the New Mexico equalization formula. While it is the understanding of the Navajo Nation that the State of New Mexico and a number of school districts are litigating the matter in the state court system, and making some progress in allowing LEAs to receive more benefit from Impact Aid funds, the position of the Navajo Nation is that the equalization provisions of 20 U.S.C. §7709 should be repealed in their entirety, rather than amended to ameliorate the negative effects which its application continues to have on Navajo students.

5) Impact Aid and Title IX funds may be used for a broad array of education needs. At the present time, how are these funds being used by LEAs serving Navajo students? Have the funds been used for any innovative or cultural programs (such as instruction in the Navajo language or Navajo history) or are the funds primarily needed for operational costs?

Response: The Navajo Nation is not aware of all of the uses to which the LEAs are applying Title IX funds. However, the Navajo Nation is advised by the LEAs that the meager portions of Impact Aid funds actually received by the LEAs are generally utilized for operational costs, such as teacher salaries, classroom supplies, and capital outlay costs, and are not available to fund innovative or cultural programs. Impact Aid funds may be used by LEAs for a broad array of educational needs, when not taken credit for by the State Education Agency. Repeal of 20 U.S.C. §7709 would allow LEAs access to these additional educational funds and provide to the LEAs the opportunity to utilize some portion of Impact Aid funds for the delivery of innovative or cultural programs.



NATIONAL INDIAN EDUCATION ASSOCIATION

700 N. Fairfax St., Ste. 210 • Alexandria, VA 22314 • Phone: 703-838-2870 • Fax: 703-838-1620
E-mail: niea@mindspring.com • Web site: www.niea.org

Statement of the
NATIONAL INDIAN EDUCATION ASSOCIATION
Before the
SENATE INDIAN AFFAIRS COMMITTEE
on the
REAUTHORIZATION OF
THE ELEMENTARY AND SECONDARY EDUCATION ACT

Submitted on behalf of
Dr. Gloria Sly (*Cherokee*)
President

by
John W. Cheek (*Muscogee Creek*)
Executive Director

October 27, 1999

Mr. Chairman and Members of the Committee:

The National Indian Education Association (NIEA), would like to thank the Committee on Indian Affairs Chairman, Ben Nighthorse Campbell, ranking member Daniel K. Inouye, and the members of the committee for providing the opportunity to present comment on the reauthorization of the Elementary and Secondary Education Act (ESEA). NIEA is the largest and oldest national non-profit organization representing the education concerns of over 3,000 American Indian and Alaska Native educators, tribal leaders, school administrators, teachers, parents, and students. This year NIEA celebrates its 30th anniversary as a national advocate on behalf of Indian people. NIEA has an elected board of 12 members who represent various Indian education programs and tribal constituencies from throughout the nation. On October 20, the NIEA Board of Directors installed their new President for the 1999-2000 year. Dr. Gloria Sly (*Cherokee*), replaces Dr. Sherry R. Allison (*Navajo*) as president. Due to scheduling conflicts, however, Dr. Sly is unable to attend today's hearing on behalf of NIEA.

The National Indian Education Association convened its national conference October 17-20 in Oklahoma City, Oklahoma. The nearly 4,000 participants attending this year's event approved several resolutions supporting increased funding for certain Indian education programs, support for tribal sovereignty curriculum, and support for federal native language education funding and policy. In relation to the reauthorization of ESEA, the NIEA membership approved a resolution opposing efforts by the U.S. Department of Education, and others, to repeal authorizations establishing federal Indian education programs including any type of block granting provisions. This resolution is key in that it supports NIEA's position in maintaining the integrity of the

Indian Education Act, as provided in the current version of Title IX of the Improving America's Schools Act (IASA).

Another major development at this year's convention was the adoption of Native Hawaiians as General Voting Members of NIEA. The adoption of this amendment to NIEA's constitution is one of the first, if not the first, that allows Native Hawaiians to be included among the voting membership equal with American Indians and Alaska Natives. Since 1993, Native Hawaiians have been seeking official recognition within NIEA as an aboriginal peoples with full voting privileges. We are pleased to see their inclusion as equal members of our association and look forward to working with them on issues of mutual and national concern.

Our comments today provide insight into how Indian educators, nationally, perceive the various proposals for the reauthorization of ESEA. During this session of Congress, NIEA has presented reauthorization testimony before the House Education and the Workforce Committee and the Senate Health, Education, Labor and Pensions subcommittee. NIEA's approach to this year's ESEA reauthorization is to advocate keeping intact all provisions related to the education of Indian people. The administration's proposal, as well as the House and Senate versions, eliminate certain authorizations under Title IX of IASA. We feel this is a step backward in light of the Indian Education Executive Order that was signed last summer by President Clinton. While the order promises to decrease the dropout rate and increase academic achievement of Indians, it sends the wrong message when programs that can accomplish these goals are eliminated. Below we provide a perspective on the demographics of Indian people and their education.

American Indians and Alaska Natives Today

Today there are over two million American Indians and Alaska Natives living in the United States. The population of Indians increased substantially between 1980 and 1990 from 1.4 million to 2 million, representing a 43 percent increase. The 2000 Census will likely show a marked increase with some early estimates showing the population growing to over 3 million. We are a young population compared with the public at large. According to the 1990 Census, 40 percent of the Indian population is under the age of 20 compared to 28 percent nationally. There are 557 federally recognized tribes in 23 states and dozens of non-federally and state-recognized tribes throughout the country as well.

There are approximately 600,000 Indian students attending the nations public, private, and Bureau of Indian Affairs (BIA)/tribal schools. The primary provider of Indian education services to public school Indian students, however, is the Department of Education's Office of Indian Education (OIE) formula program. This program has been in existence since 1972 and provides supplemental services focusing on the unique educational needs of Indian children. By and large, these programs have operated independently over the years and owe much of their success to the inclusion of parents in local planning decisions. In the current schools year (FY1999) there are 415,297 public school Indian students and 45,485 BIA students receiving services through this program for a total of 461,000. The number of grants awarded in 1999 includes: 1,120 to public schools; 84 to BIA-grant/contract schools; and 70 to BIA-operated schools for a total of 1,274 awards. Since 1989, the number of students being served through OIE programs increased by

over 23 percent (88,000 students). Funding over the same period, however, increased by only 18 percent to \$62 million in 1999. Bureau of Indian Affairs schools have been eligible to apply for funding through the Indian Education formula program since the 1988 reauthorization of ESEA.

As has been the case with OIE's student count, so too have BIA schools seen enrollment increases over the past ten years. The 1989 enrollment was 39,000 compared to 51,378 students in 1999. Today, BIA students attend 185 federally-operated or contracted schools located in 23 states. The general trend in BIA education shows tribes beginning to assume more control over local education programs. This trend is likely to continue as tribes become more sophisticated in their abilities to manage their own affairs including administration of education programs.

Between 1980 and 1990, the high school completion rate for American Indians 25 years or older living on reservations increased by 11 percent from 43 percent to 54 percent. The graduation rate for all American Indians in 1990 was 66 percent (10 percent over 1980), but still below the national average of 75 percent. The 1990 Census identified only 9 percent of American Indians and Alaska Natives over the age of 25 with a bachelor's or higher degree compared with 20 percent nationally.

The Indian Education Act of 1972

In the 1930's state schools became involved with Indian education on a compensatory basis under federal legislation called the Johnson O'Malley Act. However, Indian people were not given the opportunity to participate in either the operation or the direction of their own education. It was not until the 1960's that Indian people had their educational needs brought to national attention. In 1968, the Congress created a Subcommittee on Indian Education, Chaired by Robert F. Kennedy Jr., which held hearings throughout the country during 1968 and 1969. The report documented the deplorable health, safety and economic conditions facing Indian people in their communities and the lack of effective education models for Indian students. Dropout rates of 100 percent were not uncommon in many reservation areas around the country. The hearings resulted in major federal legislation, which afforded Indian people a first real opportunity to participate in the policies and programs that affect their educational needs. This new legislation was signed into law in 1972 and called the Indian Education Act of 1972 (Public Law 92-318). The Act provided supplementary funds for new and innovative programs for Indian students. The initial appropriation under this Act was \$18 million.

The enactment of the Department of Education on October 17, 1979, changed the organizational placement and status of Indian Education Programs authorized by Public Law 92-318, Title IV, the Indian Education Act of 1972. Prior to the establishment of the Department, all Title IV Indian Education Programs were located in a distinct and separate organizational entity within the Office of Indian Education (OIE) at the Department of Health, Education and Welfare (HEW). The top Indian administrator of OIE, Dr. William Demmert, was the first Deputy Commissioner to be appointed on January 30, 1975. During the initial phase of the Act, the Deputy Commissioner reported directly to the Commissioner of Education. Although all Title IV Indian Education Programs remained intact after establishment of the United States Department of Education, the Secretary of Education authorized a change in the organizational placement of Indian Education Programs to their present location with the Office of Elementary and Secondary Education (OESE). The status and identity of Title IV programs were then changed from a separate Office of Indian Education to Indian Education Programs and the title of the top Indian administrator was changed from the "Deputy Commissioner for Indian Education" to "Deputy Assistant Secretary for Indian

Education". This position formally changed in 1981 to "Director of Indian Education Programs" who now reports to the Assistant Secretary for OESE, rather than the Secretary of Education. This reflects a significant change in status.

To date, no other single piece of legislation has permitted such a far-reaching impact on educational achievement for American Indian and Alaska Native people than the Indian Education Act of 1972. Without these programs there would be little educational emphasis linking the unique culture of Indian people with public education. Even with the focus of Indian Education programs over the past twenty seven years, there still remains an educational gap that shows Indian students achieving at a rate lower than all other ethnic groups. A large part of this can be traced to the historical relationship Indian nations have had with the federal government over the past few centuries. Most Indian educators agree, however, that were it not for the programs offered through the Office of Indian Education, Indian students would be achieving at levels even lower than they are today.

1999 Reauthorization of ESEA and Implications for Indian People

The Administration's proposal for the reauthorization of the Elementary and Secondary Education Act makes several changes to Indian education programs. First, it eliminates all unfunded authorizations within the Act. NIEA strongly opposes this. The programs designated to be eliminated include: Indian Fellowships; Gifted and Talented Programs; Grants to Tribes for Education Administration, Planning and Development; Adult Education and programs for Native Hawaiians. Indian Fellowships and Adult Education programs were last funded in 1995 and 1996. The remaining programs have never been funded since being authorized in the 1994 reauthorization of ESEA. Below we address the major impact of OIE programs and the impact the proposed legislation will have if passed in its present form.

Tribal Education Departments

The Tribal Departments of Education authority has been in existence for four years and has never been recommended for funding within the Department of Education budget hierarchy. Since its initial authorization, NIEA has advocated annually for at least \$3 million to assist tribes in developing education department infrastructures. As tribes move toward more local control over education programs, they will need the ability to manage and design programs in accordance with tribal codes and state/national assessment criteria. The Bureau of Indian Affairs has a similar authority and with the exception of one \$100,000 grant to the Mississippi Choctaw Indian Nation several years ago, has never been funded. Although no funding is provided in the President's FY2000 BIA education budget, NIEA has recommended \$3 million for tribal departments of education. We believe that sufficient funding should be provided to assist tribes in planning and developing their own centralized tribal administrative entities in order to accomplish their goals of school reform and accreditation. Whether this is accomplished through the Department of Education or Interior is irrelevant given the fact that both agencies would need to be involved to ensure accountability. This would be appropriate given the recent trend to convert more schools from BIA to Tribal control. Funding for tribal education departments has been endorsed by NIEA's membership as well as by the National Congress of American Indians (NCAI) which represents over 250 tribes.

Adult Education Program

The Adult Education program was funded for many years and clearly addressed a major need in the Indian community. The adult education program was a success because it went to where the

Indian adults were, in their communities. The reason many Indian adults did not finish high school was because of the difficulty in trying to cope in a non-Indian environment. Adult education programs assisted on average anywhere from 5,000 and 11,000 participants annually. After the Department of Education declined to request funding for the Adult Education Program, appropriators simultaneously cut BIA's adult education budget in half to \$2.5 million which is its current appropriation request for 2000. Prior to 1996, the Indian adult education effort of the federal government exceeded \$10 million.

NIEA has consistently advocated for this program and has identified adult education as one of the major priorities for Indian people in 1999. When funding for the program was eliminated in 1995, Members of Congress looked at the idea of creating a similar program under the Adult Education Act which was then undergoing its own reauthorization. The proposal was dropped when the Office of Vocational Education (OVAE) data indicated that American Indians seemed to be served well under State adult education programs. NIEA has always been concerned with the data collection efforts of the Department and the way it collect data on the number of Indian participants.. The practice of self-identification typically does not include any type of documentation to verify that an individual is, in fact, a member of a certain tribe. As a result, we feel the numbers acquired through most Department of Education studies are greatly inflated.

Gifted and Talented

The Gifted and Talented authority has been in effect since 1988 and federal officials have been reluctant to fund an outright Indian-specific program. The authority, to our understanding, was seen as overly prescriptive and would have required the Secretary to fund two gifted and talented centers at tribal colleges, plus several demonstration grants, including other projects with BIA schools. A 1991 Longitudinal study on eighth grade students reported that the average participation in programs specially designated for gifted and talented students is about 8.8 percent. In comparison, the American Indian and Alaska Native participation rate is only 2.1 percent. NIEA supports gifted and talented programs for Indian students as a means of increasing the representation of American Indians into increasingly technical professions such as medicine, engineering, computer technology and math and science fields. From recent data surveys, the representation of Indian participants in these areas is extremely low.

Indian Fellowships

The Department and the Administration proposed the repeal of the fellowships authority in 1993-94, arguing that the program didn't create any real incentive for Institutions of Higher Education (IHEs) to make an effort to educate Indian students. It was assumed that a better approach was to pursue IHE-based programs rather than a costly grants-to-individuals program. An Inspector General's report in August 1993, detailed the problems of administering the fellowship program to individuals rather than to institutions of higher education. Lack of permanent leadership in OIE, and insufficient staff resources led to the program being abandoned by the Department in favor of other approaches to assisting postsecondary Indian students.

As a former staffer with the National Advisory Council on Indian Education (NCAIE), which once had the authority to review Indian fellowship applications prior to funding, there was a consistent gap in meeting the postsecondary needs of Indian students. Those applications slated to be funded were always rated at 100 points or the maximum allowable. Even dozens of

applications below the cut-off would be highly-scored as well, but could not be funded due to funding limitations. On average 600 to 800 applications would be received in any given grant cycle and of this only 150 applications on average could be funded. Between 1985 and 1994 the number of applications awarded dropped from 221 to 80 due to funding reductions. The last year of funding provided awards to 75 students. Between 1985 and 1996 a total of 1,900 students went through the Indian Fellowship program. The program was eventually phased out in 1996 after allowing those who had received prior year awards to complete their programs.

The benefits of providing scholarship assistance to Indian students, in our opinion, outweigh to perceived program management difficulties within the Department. While current initiatives focus on teacher training, which is also needed, there are no specific higher education programs which ensure that a finite number of Indian applicant's enter other fields of study. The Indian Health Service program allows for a little over 100 students to enter the health professions and BIA scholarships, as administered by tribes, assist less than 10,000 students with an average of \$3,000 in 1999. The Department of Education estimate for the number of Indians attending postsecondary institutions is over 130,000. The current estimate in the number of Indian students being served by specific Indian higher education programs is estimated at 35,000 which includes 25,000 tribal college students. How the remaining 105,000 Indian students are being supported in postsecondary institutions is a question NIEA would like to have answered.

Indian Technical Assistance Centers

The 1994 reauthorization of ESEA eliminated six Indian Technical Assistance Centers (ITACs) which provided programmatic-based assistance to formula grantees nationwide. With the advent of the new Comprehensive Regional Technical Assistance Centers in 1994, fewer and larger centers were thought to better provide for the technical assistance needs or programs in the field for all Department of Education K-12 programs. The concern at the time was that Indian grantees would receive fewer technical assistance opportunities without a center specifically identified for their needs. From a cursory review of recent Indian grantees, we found that indeed technical assistance among Indian grantees was lacking in sufficient quality and quantity.

The 1999 proposal for the reauthorization of ESEA plans to eliminate these centers as being ineffective in meeting the demands at the local education agency level. The focus will change by having local districts and states assume the technical assistance needs of their schools. NIEA has little data to support how well the current comprehensive centers have met the needs of Indian grantees, but our estimation is that they have been unable to serve all 1,200 grantees who make up the formula program under Title IX. The previous ITACS were regionally dispersed and better able to meet the needs of Indian projects by providing in-service workshops on a variety of topics associated with OIE programs. In relation to NIEA, they served a valuable purpose by conducting annual showcase events at our national convention, and awarded the programs which demonstrated best practices in their regions. These events showcased how well projects could be designed utilizing systemic reform and schoolwide approaches. The new reauthorization indicates that two categorical centers would be developed which would meet the needs of special population groups. One of these would be targeted to the specific needs encountered by Indian programs. We do see a problem with this center being able to meet the needs of all 1,200 Indian education grantees that are located in 41 states. NIEA fully supports a return to technical assistance centers to assist local grantees in meeting their educational goals.

Indian Education Executive Order

In August of 1998, President Clinton signed Executive Order 13096 on Indian Education. It had as its centerpiece initiative six goals that federal agencies should meet. These include: 1) Improving reading and mathematics; 2) Increasing high school completion and postsecondary attendance rates; 3) Reducing the influence of long-standing factors that impede educational performance, such as poverty and substance abuse; 4) Creating strong, safe, and drug-free school environments; 5) Improving science education; and 6) Expanding the use of educational technology. These goals laid the groundwork for federal agencies to begin coordinating efforts and resources to begin addressing the education needs of all American Indians and Alaska Natives.

NIEA's overriding concern in light of the Administration ESEA proposal is to have answered how a plan that removes such key authorizations could even consider meeting the goals being espoused by the Executive Order. The language of the Order clearly commits the Administration to comprehensive actions to improve the education of American Indian people, but doesn't make any commitments with respect to individual programs. To reiterate, the authorizations being removed from ESEA include: 1) fellowships for Indian students, 2) gifted and talented education, 3) adult education, and 4) support for tribal departments of education. NIEA's recommendation is to leave these authorization intact and begin funding them accordingly. These programs provide the perfect vehicle for ensuring the goals of the executive order are reached. New proposals are often more difficult to get into law and in the case of Indian programs are often the easiest to remove since the constituent fallout is less due to a smaller voting population.

All of these provisions, in one form or another, could be used to implement the Executive Order. The adult education provision, which focuses primarily on adult literacy, could serve as "pipeline" for future teachers, especially in line with the proposed American Indian Teacher Corps which is in the Administration's budget request at \$10 million. The Indian Fellowship program, while very expensive, could serve as a gateway opportunity to under represented professions. The Gifted and Talented program would help identify effective practices that could be applied to all Indian students.

But the provision that may have the most compelling link to the Executive Order is the tribal departments authority which would provide funding for tribal governments to create and/or strengthen educational administrative structures within the tribal organization. By creating a more stable tribal structure, tribes could more readily collaborate with the SEAs and the LEAs as directed in the EO. By all accounts, the Department of Education has historically opposed this provision arguing that this should be the sole responsibility of the Bureau of Indian Affairs. NIEA believes both agencies need a hand in ensuring the success of Tribal Departments of Education. One for the role of tribal governance and one for the needs of the Indian learner. What better example could there be of federal agency coordination than that envisioned by Tribal Departments of Education? NIEA believes that it would provide a much needed boon to the Department's relationship with tribes and that it would reinforce the Administration's commitment to the executive order.

H.R.2, Student Results Act of 1999

The House, following the lead of the Education and the Workforce Committee, has passed H.R.2, the Student Results Act of 1999. The bill, in its present, form would consolidate several authorizations into the existing Title I program within ESEA. Indian education would be included under this title. NIEA is vehemently opposed to the incorporation of Indian education into Title I. Moving Indian education into this title is a direct contradiction to the precept of

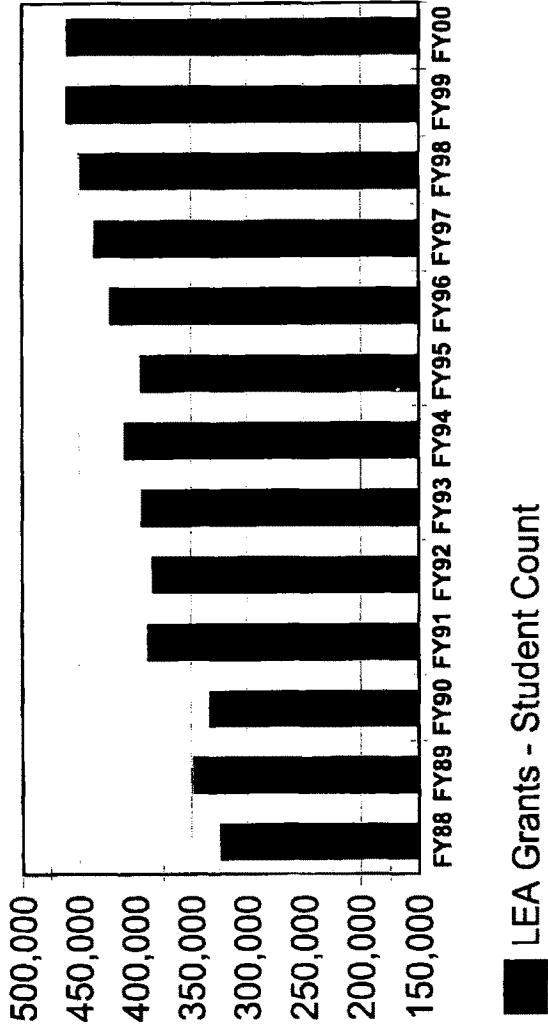
sending federal dollars directly to the classroom. Title IX programs were unique in that the dollars appropriated were sent directly to the local education agency, bypassing state education agencies. By moving Title IX into Title I, the independent nature of Indian programs are assumed into a one-size-fits-all approach which the majority Congress says its opposed to. The elimination of several unfunded authorizations, including Indian fellowships, gifted and talented, adult education, tribal departments of education and the Native Hawaiian authorization also sends a signal that these minority-focused programs are ineffective in meeting the educational needs of Native people. While some of these authorizations have not been funded since 1995, the tribal departments of education authorization has never been funded, so its ineffectiveness can only be assumed. As previously mentioned, these programs, if funded adequately, would do much to alleviating the low academic achievement levels now being experienced by all Native people.

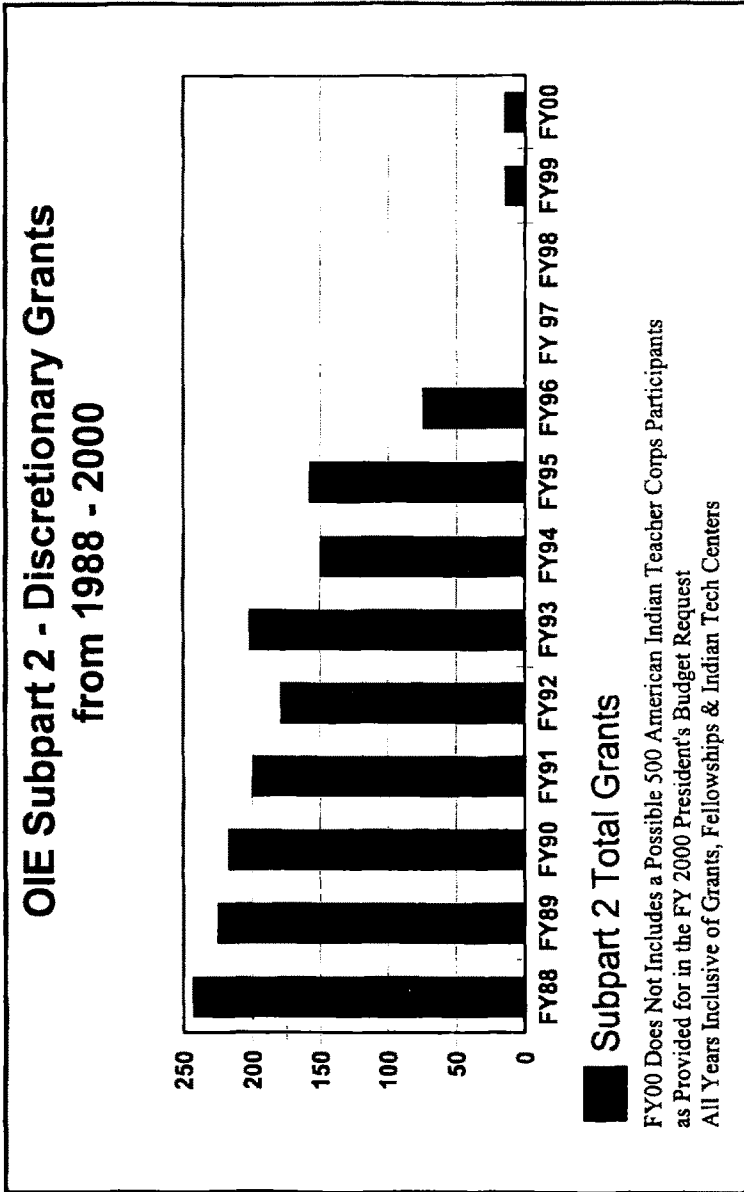
NIEA is perplexed by the irony set forth, as Congress moves to eliminate yet another authorization for Indian people. Self-determination and the trust responsibility of the federal government for education, as exemplified by these programs, has led to many accomplishments at the individual and tribal level. The elimination of these programs assumes that a better approach can cure the educational inadequacy of Native people and disregards any advancements made to date. For centuries, history has shown that when the federal government takes charge and tells Indian people what to do, the result is usually failure on a grand scale. We submit that the lack of educational programs of sufficient quality and quantity will lead to even more educational failure among Indian people as we move into the 21st century. We strongly urge Congress to reject elimination of current Indian education authorizations and to provide adequate funding thereof. In addition, we ask for the Committee's assistance in providing the voice for Native people in regards to this reauthorization.

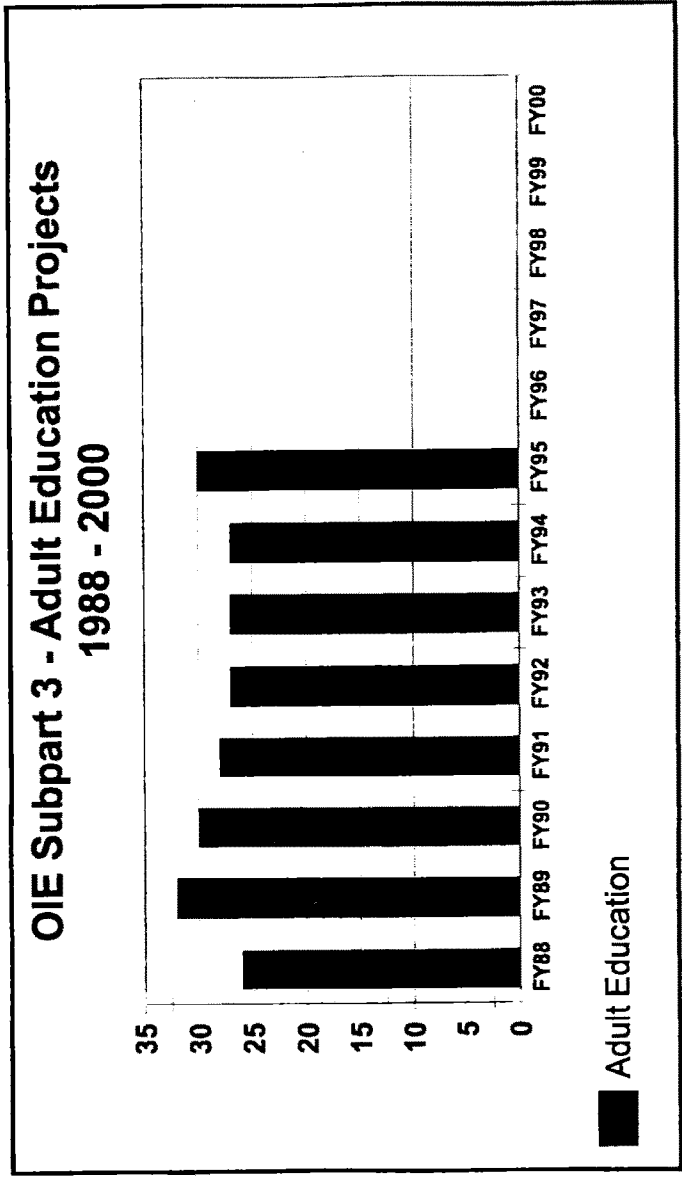
Conclusion

On behalf of the NIEA Board of Directors and the NIEA membership, I would like to thank the Committee for allowing us to share our concerns today. We appreciate the opportunity to provide comment on what is probably the most important aspect of life in Indian communities today. Once a tool to decimate and forcibly assimilate Indians into modern day existence, education has proven to be an effective deterrent to the many social ills which face Indian people today. The lack of a consistent and focused federal policy on Indian education has only delayed the educational advancement of this country's only indigenous population. Until a clear and direct approach is undertaken to elevate every education level of all American Indians and Alaska Natives in this country, we will continue to see the dismal affects that unfortunately continue to plague Indian Country. We hope that our comments here today have helped to clarify the educational need that continues to exist in Indian Country. I would be happy to answer any questions the Committee may have.

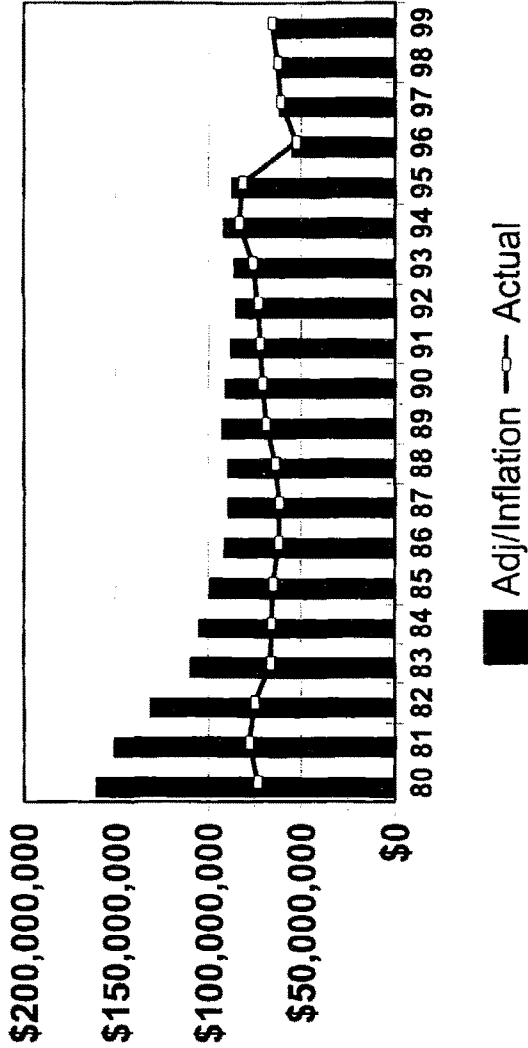
OIE Subpart 1 - Formula Grant Program 1988 - 2000 Student Count







OFFICE OF INDIAN EDUCATION FUNDING
1980 - 1999
Actual and Adjusted for Inflation



U.S. Department of Education, Office of Indian Education

INDIAN EDUCATION ACT IMPACT DATA

FISCAL YEARS 1988 - 2000 EST.

Student Count and Number of Grants Awarded

SUBPART-GRANTS TO LOCAL EDUCATION AGENCIES	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99	FY00
Formula Grants to LEAs	1,086	1,099	1,072	1,061	1,163	1,162	1,200	1,272	1,219	1,219	1,219	1,219	1,214
OIE Student Count	324,176	326,810	312,027	366,146	347,591	357,965	370,249	357,800	382,003	394,353	405,376	415,297	415,297
BIA Student Count	NA	21,523	21,467	20,155	36,755	36,243	39,377	37,000	40,482	41,917	43,069	45,485	45,485
Total Subpart 1 Student Count	324,176	348,333	333,494	386,301	384,346	394,208	409,626	394,800	422,485	436,270	448,465	460,782	460,782
SUBPART 2-SPECIAL PROGRAMS FOR INDIAN CHILDREN	25	26	25	26	25	20	24	21	0	0	0	7	7
Educational Services for Indian Children													
Planning	1	1	4	2	1	10	0	0	0	0	0	0	0
Pilot	8	9	6	6	4	12	0	0	0	0	0	0	0
Demonstration	7	7	5	7	4	0	8	3	0	0	0	0	0
Education Personnel Development	14	14	14	13	13	11	14	3	0	0	0	0	0
Indian Controlled Schools	42	39	30	19	19	20	16	17	0	0	0	0	0
Indian Fellowships	141	124	128	120	108	123	80	101	75	0	0	0	0
Indian Technical Assistance Centers	5	5	5	5	5	6	6	0	0	0	0	0	0
Demonstration Grants	0	0	0	0	0	0	0	9	0	0	0	0	0
Professional Development	0	0	0	0	0	0	0	4	0	0	0	8	8
Grants to Tribes for Educ Admin/Planning/Dev	0	0	0	0	0	0	0	0	0	0	0	0	0
American Indian Postsecondary Economic Dev Scholarships	0	0	0	0	0	0	0	0	0	0	0	0	0
American Indian Teacher Training	0	0	0	0	0	0	0	0	0	0	0	0	0
Subpart 2 Total Grants	243	225	217	200	178	202	150	158	75	0	0	15	515
SUBPART 3-SPECIAL PROGRAMS FOR INDIAN ADULTS	26	32	30	28	27	27	27	30	0	0	0	0	0
Adult Education													
Professional Development	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL ANNUAL GRANTS	1,329	1,324	1,289	1,261	1,342	1,384	1,350	1,430	1,294	1,219	1,219	1,234	1,789

Note: BIA Schools were not eligible until 1988 for OIE Formula Grants
American Indian Teacher Training includes 500 prospective teacher recruits

National Indian Education Association, June, 1999

**U.S. DEPARTMENT OF EDUCATION, OFFICE OF INDIAN EDUCATION
INDIAN EDUCATION FUNDING, Fiscal years 1994-2000 Request**

SUBPART 1 - GRANTS TO LOCAL EDUCATION AGENCIES	FY 94	FY 95	PRES REQ	ACT	FY 97	FY 98	FY 99	PRES REQ
LEAs - Sec 9112	\$52,589,000	\$54,169,000	\$54,993,000	\$45,603,000	\$53,178,000	\$54,770,000	\$62,000,000	FY 00
BIA CONTRACT SCHOOLS - Sec 9112	\$2,173,000	\$2,452,000	\$2,450,000	\$2,226,000	\$2,594,000	\$2,594,000	\$0	\$0
BIA OPERATED SCHOOLS - Sec 9112	\$2,448,000	\$3,065,000	\$3,110,000	\$1,971,000	\$2,298,000	\$2,340,000	\$0	\$0
INDIAN CONTROLLED SCHOOLS (Sub I in 94)	\$3,087,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
SUBPART 1 SUBTOTAL	\$60,297,000	\$59,686,000	\$60,593,000	\$50,000,000	\$58,050,000	\$59,750,000	\$62,000,000	\$62,000,000
SUBPART 2 - SPECIAL PROGRAMS FOR INDIAN CHILDREN								
EDUCATIONAL SERVICES FOR INDIAN CHILDREN - Sec 9121	\$4,601,000	\$3,983,000	\$0	\$0	\$0	\$0	\$1,400,000	\$1,400,000
PLANNING, PILOT, AND DEMONSTRATION	\$1,174,000	\$4,120,000	\$0	\$0	\$0	\$0	\$0	\$0
INDIAN FELLOWSHIPS - Sec 9123	\$1,735,000	\$1,505,000	\$1,000,000	\$0	\$0	\$0	\$0	\$0
EDUCATIONAL PROFESSIONAL DEVELOPMENT	\$2,982,000	\$850,000	\$580,000	\$0	\$0	\$0	\$0	\$0
PROFESSIONAL DEVELOPMENT - Sec 9122	\$0	\$510,000	\$5,929,000	\$0	\$0	\$0	\$1,865,000	\$1,865,000
DEMONSTRATION GRANTS	\$0	\$1,734,000	\$6,500,000	\$0	\$0	\$0	\$0	\$0
INDIAN TECHNICAL ASSISTANCE CENTERS	\$3,615,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
GIFTED AND TALENTED PROGRAMS - Sec 9124	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
INDIAN CONTROLLED SCHOOLS (Sub 2 in 95 on)	\$0	\$3,021,000	\$0	\$0	\$0	\$0	\$0	\$0
GRANTS TO TRIBES FOR EDUC ADMIN/PLNG/DEV - Sec 9125	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AMERICAN INDIAN POSTSEC ECON DEVEL SCHOLARSHIPS	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AMERICAN INDIAN TEACHER TRAINING	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
SUBPART 2 SUBTOTAL	\$14,307,000	\$12,115,000	\$14,009,000	\$0	\$0	\$0	\$3,265,000	\$13,265,000
SUBPART 3 - SPECIAL PROGRAMS FOR INDIAN ADULTS								
PROFESSIONAL DEVELOPMENT	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
ADULT EDUCATION - Sec 9131	\$4,861,000	\$5,420,000	\$5,431,000	\$0	\$0	\$0	\$0	\$0
SUBPART 3 SUBTOTAL	\$4,861,000	\$5,420,000	\$5,431,000	\$0	\$0	\$0	\$0	\$0
NATIONAL ACTIVITIES								
STATISTICS AND ASSESSMENT - Sec 9141	\$200,000	\$0	\$0	\$0	\$0	\$0	\$735,000	\$1,735,000
RESEARCH/EVAL/DATA COLLECTION/TECH ASST	\$0	\$125,000	\$987,000	\$0	\$0	\$0	\$0	\$0
NATIONAL ACTIVITIES SUBTOTAL	\$200,000	\$125,000	\$987,000	\$0	\$0	\$0	\$735,000	\$1,735,000
SUBPART 4 - ADMINISTRATION								
OFFICE OF INDIAN EDUCATION	\$3,360,000	\$3,775,000	\$3,278,000	\$2,377,000	\$2,943,000	\$2,600,000	\$2,600,000	\$2,600,000
ONAL ADVISORY COUNCIL ON INDIAN EDUCATION - Sec 9151	\$475,000	\$471,000	\$507,000	\$120,000	\$0	\$50,000	\$50,000	\$50,000
TRIBAL COLLEGE EXECUTIVE ORDER (Sub 4 in 98)	\$0	\$0	\$0	\$0	\$0	\$200,000	\$200,000	\$200,000
SUBPART 4 SUBTOTAL	\$3,835,000	\$4,246,000	\$3,785,000	\$2,497,000	\$2,943,000	\$2,850,000	\$2,850,000	\$2,850,000
GRAND TOTAL	\$83,500,000	\$81,592,000	\$84,785,000	\$52,497,000	\$60,993,000	\$62,000,000	\$66,000,000	\$77,000,000

OIE Federal Administration

Cost Covered by Gen. Admin.



NATIONAL INDIAN EDUCATION ASSOCIATION

700 N. Fairfax St., Ste. 210 • Alexandria, VA 22314 • Phone: 703-838-2870 • Fax: 703-838-1620
E-mail: niea@mindspring.com • Web site: www.niea.org

November 16, 1999

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510

Dear Chairman Campbell:

The National Indian Education Association (NIEA) would like to thank you for allowing us the opportunity to provide testimony on the reauthorization of the Elementary and Secondary Education Act (ESEA) on October 27. We also appreciate the time and effort that you, Vice-Chair Senator Daniel Inouye, and committee staff, have committed to the reauthorization of this important piece of legislation. We ask that our following comments be included for the record. Again, thank you for assistance in meeting the needs of Indian learners throughout the reauthorization process. Below we provide comments on the supplemental questions you submitted to NIEA on November 1. Your questions are in bold with our comments following.

(1) What do you feel has been the role and impact historically of the Parent Committees at the Local Educational Agency level?

Parent committees have been an integral part of the Indian education Act since its 1972 enactment. Parent committees were included in the legislation in an effort to reverse the previous federal education efforts at educating Indian children. Some of these policies forcibly removed Indian children from their parents and placed them in boarding schools in order to assimilate them into mainstream education. The parent committee provision in the original Indian Education Act law provided the link between the child, home and the school, which up to 1972 was missing. Many of the parents who were a part of the new program were themselves educated in boarding school settings.

Parent committees at the LEA level provide an option for parents to become involved in the education of their children. Many Indian parents feel intimidated by the school their child attends and have historically held a basic mistrust of the federal government. The fact that these committees are made up of Indian parents, allows them to feel they are a part of the local school establishment and involved in a school program designed specifically for the Indian community. And since the parent committee determines the direction for the program locally, they can exert considerable influence into how the program meets the needs of their children which was the whole intent of the legislation.

What recommendations or comments could you give this Committee regarding the idea of requiring LEAs to coordinate Parent Committees with other governance bodies and facilitate parent committee involvement with regular classroom teachers?

The idea of requiring Indian parent committees to coordinate with other governance bodies [depending on who the other governance bodies are] may work well if the idea is to coordinate the various programs within a school wide program. Indian education programs, as well as Indian parent committees, have traditionally been seen as being apart and separate from the regular school environment. The local Indian community was responsible for ensuring that the educational needs of Indian students attending public schools were met. Title IX, in a sense, exemplified the trust responsibility of the federal government to provide educational opportunities for Indian children in public schools, especially when you look at the era in which the program was begun. While the Department of Education would likely not acknowledge a trust responsibility exists for Indian education, they will endorse and promote categorical programs for students who fit certain economic and disadvantaged criteria that are often indicative of academic achievement levels.

(2) How would you describe the working relationship and coordination between the Department of Education and BIA Office of Indian Education Programs?

The working relationship between both agencies appears enhanced since the signing of the Presidential executive order on Indian Education. The order required co-chairs from both agencies to work together in seeing the goals of the order are met. The other participating agencies look upon these two as the "lead agencies" who will exemplify what can be achieved through a successful order.

The Title IX law has remained basically the same since its 1972 enactment. One of the few changes to the legislation occurred in 1988 when Bureau of Indian Affairs (BIA) schools were made eligible for Indian Education Act formula funding. The first year of eligibility for BIA schools added an additional 21,000 to the OIE student count. Today, that number has increased to over 45,000 and represents nearly 1/10th of the total student count.

In 1997, funding for the Office of Indian Education was transferred from Interior to the Labor, Health and Human Services and Education appropriations subcommittee. For the first time since the program's enactment, the Department of Education had total budgetary and programmatic influence over the program's direction and funding. Whether this had an impact on the BIA's relationship with the Education Department is not known, but any savings from not having to request funding for OIE programs does not appear to have increased any other OIEP funding for any of its programs.

The BIA benefits from Department of Education funding, not only through the OIE program, but also from the various set asides which transfer to the BIA. In 1999, the set aside amount was approximately \$165 million. Memorandums of Agreement between both

agencies help to ensure that set aside dollars assist BIA students while maintaining program integrity.

What recommendations could you make to this Committee to improve the relationship?

One problem area that has prevented consistent dialogue between the two agencies is the lack of permanent leadership in both agencies. This has changed in recent years at the Office of Indian Education in the Department of Education, but currently there is an acting person filling the lead education position at BIA. Until permanent leadership fills both these positions and they are able to work hand-in-hand on mutual concerns, we will continue to see short-term solutions to long-term problems.

(3) Given the current emphasis on accountability, quality, standards and student assessments, what does NIEA see as the current and projected research needs focused of course on Indian education?

Research on Indian education is literally non-existent. Even rudimentary information such as dropout rates, retention rates, levels of academic achievement etc., have eluded education advocates. In 1995 when the Office of Indian Education faced elimination, even the most basic information on program performance was unavailable. We knew the programs worked, but we didn't have the data to support what was happening in the field. Part of the problem is that Indian education programs were designed with a totally different precept in mind than other programs. OIE programs dealt directly with the findings of the Kennedy report in 1968 and included a total package of education programs designed to meet the educational deficiencies of American Indians attending K-12 schools, higher education and the needs of Indian adults.

The Indian Education Executive Order calls for a research agenda focused on the needs of the Indian learner. The research agenda was to have been completed by the August 6, 1999 anniversary of the signing of the executive order, but to date, the agenda has yet to be finalized.

NIEA's recommendation is to have the most basic information such as student dropout rates, levels of academic achievement for Indian students attending public and tribal schools reflected in the department's general data gathering effort. This concern has been noted by others as you can see from an excerpt from our FY2000 budget testimony to your committee:

"NIEA appreciates the targeted increases for Indian education, but continues to be concerned that studies on American Indian and Alaska Native students are not already a part of the Department's data gathering

effort. All other ethnic populations receive considerable research results without having their respective program budgets cover the cost. A 1996 report by the United States Commission on Civil Rights titled the 'Equal Educational Opportunity Project Series, Vol. 1' found that Department of Education data on student characteristics was lacking among students from American Indian, Asian and other national backgrounds. The report stated that "accurate, reliable and complete data on these ethnic groups are vital for the efforts of the education community to assess the needs of all student sub-populations." The report recommended that documents from the Department of Education's Office of Educational Research and Improvement (OERI), and other federal agencies that contain data utilized by policy and decision makers, should include information on these populations. NIEA echoes this position and recommends that the Department of Education make a concerted effort to provide research data for all ethnic categories when conducting studies and that they do so with funds requested through their own research department."

How would you assess the current national research efforts to this point?

Research and data collection on American Indians and Alaska Natives within the Department of Education has been a fairly recent experience. Only since the late eighties has there been any type of concerted effort at data collection on behalf of Indian students. One of the first was the enhancement of data collection tied into the 1990 Census. A set amount of dollars were expended to ensure that the 1990 census gathered certain educational and demographic data that could be utilized by the Department of Education.

One of the major concerns NIEA has had with the research effort within the Department of Education is that for any data collection efforts to occur on behalf of Indian students, the funding must come from Indian education appropriations. We are not certain if other minority/ethnic programs within the Department of Education have their budgets reduced in order to gather such data, but our position is that the department's research unit should be gathering this information as a standard practice and with their own budget.

Another concern with data collection within the Department is that for all the attention paid to reliable and statistically-significant data, the department's data collection relies almost exclusively on self-identification by Indian respondents. These numbers are, in our opinion, greatly inflated and an unreliable indicator of the actual numbers of the Indian population. One example is the number of American Indians and Alaska Natives estimated to be attending postsecondary institutions. The most recent reports show an Indian attendance rate of over 130,000. From our review of Indian-specific higher education programs, there are at most 40,000 Indians benefitting from higher education funding specifically for Indian people.

What are NIEA's thoughts on contracting or privatizing some or all of the research efforts by the Department of Education, Office of Educational Research and other federal agencies?

Over the past two decades, we have seen an increase in the number of American Indians who have gone on to higher levels of educational achievement. A good portion of these professionals have reached their potential through many of the programs offered through the Indian education Act, especially programs like the Indian fellowship and education professional development. NIEA would like to see more Indian people involved in many of the research activities being conducted by the Department of Education. While there may be certain Indian individuals who assist the research agenda of the department, there are many more who do not.

NIEA would be hesitant in endorsing that all research activity be removed from the department since they do provide a wealth of information on the general student population at all education levels. We would like to see, however, more Indian involvement in the design and implementation of current and proposed studies, especially those that intend to focus more effort on the Indian population. Since studies on the Indian population tend to cost more due to the small numbers of Indian people, we would recommend that if research contracts were made available, then a portion should be made available specifically for Indian applicants.

- (4) During the hearing there were many remarks surrounding the topic of Impact Aid. The National Indian Impact Schools Association proposes striking Title VII, section 8009(b). Does NIEA support this position or what comments, suggestions would you have on this issue?**

In 1998, NIEA passed a resolution in support of elimination of section 8009(b) of the Impact Aid law. Our justification was the obvious inequity of funding that had occurred in certain states who utilized the equalization formula for determining Impact Aid payments. Unless a change is made in ensuring that the all schools benefit equally from the program, then we will continue to maintain our position in opposition to section 8009(b).

What is NIEA's position on the Baucus-Hagel bill, S.897 regarding Impact Aid?

We are just now reviewing the bill you mention. We will forward our position on the bill as soon as our analysis is completed.

Would you support the legislation as it currently has been introduced which could possible be a part of the ESEA reauthorization effort?

- (5) Title IX requires states and LEA's to provide at least 90% of the education funds they provided in the previous fiscal year—or risk losing Title IX funds for the next year. What has been the experience of Indian Country with this requirement of “maintaining fiscal effort?”**

Every year, there is an opportunity to allow new grantees to apply for Title IX funds. Unless appropriations increase annually to support the addition of new grantees, there is a possibility that some grantees will receive a reduction in grant amounts due to a larger number of awardees. Current grantees should not be penalized as a result of new grantees coming on board.

Currently, Title IX funds go directly to LEA's without having to be administered through State Education Agencies. Should any type of block granting proposals become law, and they include Title IX, then there will be the possibility of OIE grantees not meeting this threshold. Title IX, in its purist form, was designed to meet a trust relationship need of Indian people. If the program assumes a categorical

- (6) The Department gave the rationale that the proposed four repealed Indian education programs are not being eliminated but extended into a larger formula not taking anything away from the existing picture. What is your response to the Department's justification during Assistant Secretary Johnson's testimony?**

We disagree with Acting Assistant Secretary Johnson's assertion that other programs will be able to provide the level and quality of services that these programs have provided. Some of these programs have been a part of the Indian Education Act since 1972. Many of the tribes and tribal organizations that were funded under these programs had the expertise and cultural awareness to make these programs work where other non-Indian programs failed. One of the assumptions by the department, in regards to adult education, was that the needs of Indian adults seemed to be taken care of by the existing state-operated adult education programs and that there was no need to provide a section specifically for Indians in the recently reauthorized Adult Education Act. Existing adult education programs typically do not serve Indian reservation locations and tribal communities in rural or urban settings since they consider this population to be assisted through other sources such as the BIA.

One of the justifications used in the mid-nineties when the adult education program was unfunded was that the reauthorization of the Adult Education Act would include language supporting adult education programs for Indian adults. The ensuing bill never made it through with any provisions specifically for the Indian population.

Do you agree with her comments?

Ms Johnson's comments, in our opinion, assumes a one-size-fits-all approach to dealing with the needs of all students, including the Indian community. Her focus, as is the

department's overall approach, appears to be one of equality among all ethnic categories and programs. Indian education, as are issues of tribal sovereignty and trust responsibility, etc., reflect the government-to-government relationship that exists between Indian Country and the United States. The failings being experienced by many Indian learners, to a great extent, result from this country's historical dealings with Indian people. The Indian Education Executive Order embodies this ideal by acknowledging the government-to-government relationship with Indian people and the need to increase the educational attainment level of Indian students. Unfortunately, many of the decisions being made in regards to Indian education programs fail to acknowledge this relationship.

- (7) **The Department also mentioned that Indian students could be eligible and qualify for Title I programs, for example, the Free Lunch program targeted for low income students. There was some discussion of this program and other set aside programs. Do you feel that this is true and that Indian students will have the same opportunities as other public school students if this repeal becomes law?**

Repealing any of the existing programs of the original Indian Education Act, without the consent of Indian Country and without the appropriate opportunity for consultation, in our opinion, violates the integrity of the original law and the authors of that legislation. Were our Indian students achieving at a level higher than what they are, we would likely endorse the position being taken by the Department in its reauthorization proposal. The levels now being attained by our Indian students are major improvements over what they were in 1972, but we are not at the level that we need to be at. Any improvements that have been made, have in some way been made due to the involvement of Indian parents, and the availability of programs that met the needs of the entire Indian family, including adults.

NIEA thanks the committee for allowing us to provide our comments as they relate to Indian education. We would also like to request that this committee support NIEA's position in keeping all programs of the Indian Education Act intact and funded at levels appropriate to make a difference in the lives of Indian people. Thanks you for your time and for consideration of our position.

Sincerely,



John W. Cheek
Executive Director
National Indian Education Association

NATIONAL INDIAN IMPACTED SCHOOLS ASSOCIATION

Testimony of

NATIONAL INDIAN IMPACTED SCHOOLS ASSOCIATION

on the

Reauthorization of the Elementary and Secondary Education Act

Presented before the

SENATE COMMITTEE ON INDIAN AFFAIRS

October 27, 1999

Brent Gish, NIISA President
c/o Mahnomen Public School
P.O. Box 319
Mahnomen, Minnesota 56557
218-935-2211

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today on behalf of the National Indian Impacted Schools Association regarding reauthorization of the Elementary and Secondary Education Act.

My name is Brent Gish. I am a member of the White Earth Band of Chippewa Tribes of Minnesota and a former tribal council member. For twenty years I taught in the Naytahwaush Elementary School on the White Earth Reservation in Minnesota. I am currently Superintendent of the Mahnomen Public School District on the White Earth Reservation and am also President of the National Indian Impacted Schools Association (NIISA).

The Mahnomen School District provides education both inside and outside the walls of our school facilities. In addition to educating students in our two elementary schools and the junior/senior high school, our educational services include a home intervention program, a pre-school program, and after-school child care.

The National Indian Impacted Schools Association represents public school districts which contain Indian trust land and Alaska Native lands. The Impact Aid program provides federal funds for public school operations that would have otherwise been provided by local tax revenues but for the presence of federal property -- in our case, primarily lands held in trust by the federal government for Indian tribes. The Impact Aid program is administered through the Department of Education.

Approximately 90% of Indian and Alaska Native elementary and secondary students nationwide attend public schools. Most of the remaining 10% of students attend Bureau of Indian Affairs-system schools whose operating budgets come through BIA appropriations.

Every state represented on the Senate Committee on Indian Affairs receives federal Impact Aid -- the most recent figures we have show that in fiscal year 1997, \$331 million in Impact Aid was distributed to states whose Senators are on this Committee.¹

About half -- or \$300+ million -- of the Impact Aid basic support payments are made to public school districts because of the presence of students living on Indian lands. Other funding is provided to school districts which have limited tax bases due to military land and low rent housing.

¹ Alaska - \$63 million; Arizona \$98 million; Colorado - \$6 million; Hawaii - \$28 million; Minnesota - \$6 million; Nevada - \$3 million; New Mexico - \$56 million; North Dakota - \$16 million; Oklahoma - \$19 million; Utah - \$6 million; Washington - \$26 million; and Wyoming - \$5 million.

My comments will focus on two areas: Impact Aid and school construction. As a legislative matter, Impact Aid is under the jurisdiction of the Health, Education, Labor and Pensions (HELP) Committee and public school construction will fall under the jurisdiction of the HELP Committee and/or the Finance Committee, depending on the content of the proposal. *It is appropriate however, that the Senate Committee on Indian Affairs be knowledgeable about and make recommendations to other Congressional Committees on the Indian aspects of the Impact Aid program and school construction. These are critical issues for schools educating students from Indian lands.*

Impact Aid. There are several Impact Aid reauthorization proposals in circulation -- proposals by the Administration, the Senate HELP Committee (at this time in the form of a discussion summary) and the National Association of Federally Impacted Schools (NAFIS). *NIISA members, all of whom are also members of NAFIS, support the NAFIS Impact Aid proposal,* but there are positive provisions in other proposals and there are provisions NIISA would like which are not in any current bill. Below are key points regarding Impact Aid on which we ask your support.

- ***Forward Fund the Impact Aid Program.*** We urge Congress to take the long overdue step of providing appropriations to forward fund the Impact Aid program. Other major education programs, e.g., Title I, Individuals with Disabilities Education Act, and Bureau of Indian Affairs school operations, are forward funded. Public school administrators in heavily impacted districts must make very difficult and risky program and personnel decisions for the upcoming school year or the next school year without knowing how much Impact Aid funding they will be receiving. For many Indian lands schools, Impact Aid is the primary source of school operations funding and the schools would close without it.

While school administrators cope with this system, it makes much more sense for a school administrator to know 6-12 months prior to the beginning of the school year what its budget will be. For example, in Minnesota we are required to sign contracts for tenured teachers by April 15th for the upcoming school year. For non-tenured teachers, we must sign contracts by June 1 for the Fall term. Because Impact Aid is not forward funded, we must sign contracts for tenured teachers 4 1/2 months prior to the knowing the amount of money we will receive -- and that is under circumstances when we have a Labor-HHS-Education Appropriations bill which is signed by October 1st -- a rare occurrence, as you know.

When the government shut down several years ago, Impact Aid schools had to borrow money just to stay open and had to pay large amounts of interest -- tens of thousands of dollars for some schools -- for which they were not reimbursed. Some Impact Aid schools are in the position now of having to borrow money because of problems at the Department of Education resulting in chronically late Impact Aid payments. We know that Congress understands this problem because it has made most federal education programs forward

funded. Impact Aid is a program of basic support for schools – it hires the teachers, pays the utility bills, transports students, etc. and this makes it all the more urgent for it to be forward funded.

We realize that the first year of forward funding will strain the appropriations process as Congress would have to make available two years worth of funding. On the other hand, we have a budget surplus and there is support from the Administration and both parties in Congress for increased federal education funding.

If the Impact Aid program cannot be forward funded in total, we suggest that the Basic Support and the Disabilities portions of the program could be forward funded or Congress could look at the possibility of a phased-in approach to forward funding.

- Maintain Flexible Use of Impact Aid Funds. One of the attributes of the Impact Aid program is that it provides flexible funds to public school districts. Because Impact Aid funds are actually in lieu of a property tax base, it is logical that they are not geared toward specific program use or federal accountability standards. That said, public schools must meet local and state standards, and rightfully so. It is just that we do not believe that another set of standards should be linked to the Impact Aid basic support program.

- Make the Trust Responsibility for Indian Education an Explicit Part of the Impact Aid Findings. Neither current law nor the Administration's Impact Aid proposal make specific reference to the responsibility of the federal government for assisting with the education of children living on Indian trust and Alaska Native lands. We recommend that the Impact Aid law contain an express acknowledgment of the federal responsibility to provide funding to school districts for the education of federally connected children, and that it expressly mention the responsibility for children living on Indian trust and Alaska Native lands.

- Maintain the Current Indian Policies and Procedures. We oppose the changes the Administration has proposed regarding implementation of the Indian Policies and Procedures (IPP) for the Impact Aid program.

Under current law, a process called "Indian Policies and Procedures" provides a formal link between tribal governments, Indian communities, and public schools. We support this process. Specifically, it requires school districts which receive Indian lands Impact Aid funding to consult with tribes and the Indian community and develop Indian Policies and Procedures. Tribes and parents of Indian students are able to comment on whether Indian students are equal participants in educational programs and school activities, and to request modifications in school programs and materials. Tribes also have administrative appeal rights under the Impact Aid statute.

The Administration proposes to require each school district which receives Title IX, Part A (Indian Education Act formula grants) to use the Title IX parent committee to carry out its impact aid consultation requirement. Another option proposed by the Administration is for the school district to comply with its Impact Aid consultation requirement through meeting the parental involvement requirement of the Title I program – a difficulty with that option is that Title I committees have no requirement for Indian membership and problems could arise with this Committee handling the consultation on a program premised on the presence of Indian lands.

We do, of course, work with the Title IX parent committee on the Title IX program and those committee members are always welcome to participate in any consultations on the use of Impact Aid. *But we already have a broad, community-based consultation process in place involving tribal governments, parents and community members, and do not think it wise to change this process by vesting it in one particular committee.*

• *Provide Meaningful Construction Assistance to Heavily Impacted Schools.* In recent years Congress has appropriated between \$4-\$7 million annually under the authority of the Impact Aid law for construction/repair. Funding is distributed, via formula, to heavily (50%) impacted schools. The funds received by the schools are so small that they cannot make any real dent in construction needs. We welcome any funds for repairs, of course, but we need more than band aids for our crumbling schools.

Senators Baucus and Hagel introduced Impact Aid-specific school construction legislation which we would like to see included in the reauthorized version of the Impact Aid law (or enacted sooner, if possible). That bill, S. 897, would authorize discretionary grants for school construction and renovation for federally impacted schools. It would authorize \$50 million in FY 2001 and such sums as necessary for the next four years. Funding would be divided as follows: 45% Indian land schools, 45% military schools and 10% for emergencies for schools that have at least half of their students from Indian lands. The bill was referred to the HELP Committee. A House companion bill was introduced by Representatives Hayworth and Pomeroy.

The Administration's Impact Aid construction proposal would provide all appropriated funds for Indian lands schools.

Most school construction proposals -- and there are many -- do not authorize direct construction funding as would S. 897 but rather would utilize the tax code to assist schools with facility construction. We comment on some of these proposals below.

School Construction Proposals Outside the Impact Aid Program. We urge that major school construction legislation, whether as part of ESEA reauthorization or not, be enacted by this Congress. How one views school construction proposals is determined in large part by the economic

circumstances of the school district. And school districts with Indian lands vary widely.

For instance, there are 80 school districts which are made up entirely of Indian lands and 161 school districts which have at least 50% Indian lands. For the most heavily impacted Indian lands schools which have little or no bonding authority, legislative proposals whose benefits are dependent upon the local school district issuing a construction bond, are of no benefit. But for schools with a lesser percentage of Indian trust lands, relaxation of arbitrage rates and tax free bonds may indeed be of some assistance.

We would like to see a legislative proposal which takes into account the varying circumstances of Indian lands schools. NIISA has reviewed many of the pending school construction bills from the 105th and 106th Congresses, and has the following comments on their applicability to Indian lands schools:

- *SEAs Should be Authorized to Issue Bonds.* Pending bills which would authorize State Educational Agencies (SEAs) to issue school construction bonds can, if a state uses this authority, be of assistance to revenue-poor Indian lands school districts which have limited or no bonding capacity. We realize that some states will not use this authority, but we urge that school construction legislation provide this option. Proposals which rely totally on Local Educational Agencies (LEAs) raising funds through the issuance of bonds will not help heavily impacted Indian lands schools.

- *Equitable Distribution of Benefits.* We prefer those school construction proposals which take into account the needs of LEAs. For instance, the bills which would allocate federal tax credits for school modernization bonds that would provide 65% of credits to states based on the Title I formula and 35% to the largest 100 urban schools is preferable to the proposals which would split the benefits 50/50. (Tax credits for school modernization bonds would pay 100% of the interest on bonds as opposed to 25-30% of the interest cost for traditional tax exempt bonds.)

- *Target Benefits to Low-Income School Districts.* Some of the legislative proposals which would require states to apply to the Secretary of Education to apply for bond authority also require that the state describe how it would use its funding to assist LEAs which lack the fiscal capacity to issue bonds on their own. We support this approach.

- *Relaxation of Arbitrage Profits is Not Needs-Based.* The proposals which would relax the restrictions on arbitrage profits² as a means to stimulate school construction, while being beneficial to some schools,

² State and local arbitrage bonds are tax-exempt bonds issued where all or a major portion of the proceeds are used to purchase securities with a higher yield. Because state and local governments do not pay federal income tax on their interest earnings, Congress has limited their ability to earn arbitrage profits. Under current law, construction bonds earn arbitrage profits if they meet the following schedule for spending bond proceeds: 45% within one year of issuance; 75% within 18 months, 94% within two years; and, the remaining 5% within 36

do not target funding to low-income districts. Nor do they address the lack of local revenue sources in districts which have a small or no tax base.

In summary, NIISA recommends that Congress and the Administration work with tribal and state governments and school districts to develop workable school construction funding options for public schools on Indian lands. A firm commitment from all levels of government is vital. A variety of needs-based financing options including direct federal appropriations, loan guarantees, tax credits, and lease-back arrangements should be seriously examined.

Again, thank you for the invitation to the National Indian Impacted Schools Association to appear before this Committee. We look forward to working closely with you as legislation affecting Indian and Alaska Native students in public schools moves through Congress.

months. If state and local governments fail to meet this schedule, then they have to rebate their arbitrage earnings to the federal government.

NATIONAL INDIAN IMPACTED SCHOOLS ASSOCIATION

The National Indian Impacted Schools Association (NIISA) is an association of public schools in Indian Country dedicated to quality education and to assuring that the United State's obligation to provide resources for educating children who reside on Indian and Alaska Native lands is fulfilled. Membership consists of school districts that receive federal Impact Aid funds because of the presence of students from Indian trust lands and Alaska Native lands. NIISA schools are also members of the National Association of Federally Impacted Schools (NAFIS), whose membership includes all categories of schools which receive Impact Aid funds.

Impact Aid provides basic operational support for school districts which have a diminished tax base because of the presence of federal lands (primarily Indian and military lands).

For Indian country, the Impact Aid program is a vital element of the public policy of providing every child a free public education. It is also a clear cut example of the U.S. government carrying out its trust responsibility -- in this case, for education -- to Indian and Alaska Native people.

SOME FACTS ABOUT SCHOOLS IN INDIAN COUNTRY

- There are nearly 700 school districts throughout the country which receive Impact Aid funds for Indian lands students.
- Funds for Indian lands students represents 44% of the Impact Aid basic payments appropriation.
- 48 U.S. Senators and 68 House Members have schools in their states/districts which receive Indian lands Impact Aid funds.
- The Indian Country land base that generates Impact Aid funds consists of 53 million acres of Indian trust land in the lower 48 states and 44 million acres included in the Alaska Native Claims Settlement Act.

WHY IS IMPACT AID CRUCIAL TO INDIAN COUNTRY SCHOOLS AND TRIBES?

- The ability for heavily impacted schools in Indian Country to raise revenue is greatly restricted. For example, in School District 87J-L in Rocky Boy, Montana, where every student is Indian and lives on Indian trust land, a mill of taxation is worth only \$55. This school would have a *4,545 mill levy* to raise just \$250,000!
- The level of poverty affects school districts ability to raise revenues. (1990 Census data)
 - ✓ Poverty in Indian reservation areas is 3.9 times the U.S. average (50.7% vs. 13.1%).
 - ✓ The poverty rate of Indian children in reservation areas is 60.3%, or three times the national average.
 - ✓ U.S. per capita income is 3.2 times that of Indian people in reservation areas (\$14,420 vs. \$5,578).
- The Impact Aid statute provides a formal link between tribal governments, Indian communities and the public schools. This is especially important because public schools are state institutions, serving children residing on Indian lands over which tribal governments have authority. School districts must consult with tribes and the Indian community and develop Indian Policies and Procures (IPP). Tribes and parents of Indian students are able to comment on whether Indian students are equal participants in educational programs and school activities, and to request modifications in school programs and materials. Tribes also have administrative appeal rights under the Impact Aid statute.

WHAT ARE NIISA'S GOALS?

- Full Funding for Impact Aid. NIISA advocates adequate funding for Impact Aid and supports the goal to fully fund the program. Of particular importance is the basic support payments part of the program which provides operational support. NIISA testified in support of \$754 million for this purpose for FY 2000. NIISA will work to protect funding for Indian lands schools when the 106th Congress reauthorizes the Impact Aid program.
- Facilities Construction. Our national policy of providing a free public education to all children requires safe and adequate facilities in which to teach and learn.

The U.S. General Accounting Office surveyed the pressing nationwide need for school repair and construction, and documented that most schools in need of such assistance have student populations that are predominantly minority or poor.

The Impact Aid law authorizes small amounts of Capital Fund Payments to schools on a formula basis. These funds are totally inadequate to meet the need for new construction in Indian Country. For example, the Heart Butte school in Montana received \$20,000 in FY 1996 Impact Aid construction funds. They need a junior high school, at an estimated cost of \$1 million (a very modest amount for a school). At \$20,000 a year, the school district would have to accumulate its funding for nearly 50 years in order to have \$1 million! If adequate funding is not provided, the norm for school facilities in Indian country will soon become temporary trailer houses and modular buildings.

NIISA recommends that Congress and the Administration work with tribal and state governments and school districts to jointly develop a sensible school construction funding policy for public schools on Indian lands. A firm commitment from all levels of government is vital. A variety of financing options including direct federal appropriations, loan guarantees, tax-free bonds, and lease-back arrangements should be seriously examined.



FOR MORE INFORMATION	
Brent Gran, NIISA President	1000 1st Avenue
Mannheim Public Schools	John Schmitt, Deputy Superintendent
1000 Boyer Drive	200 E. Superior Street
Mannheim, Minnesota 55557	Mannheim, MN 55558
218-924-2211	218-924-2211



National Indian Impacted Schools Association

November 12, 1999

The Honorable Ben Nighthorse Campbell
Chairman
Senate Committee on Indian Affairs
838 Senate Hart Building
Washington, DC 20510-6450

Dear Chairman Campbell:

Thank you for the opportunity to give testimony to the Committee on Indian Affairs on October 27th on behalf of the National Indian Impacted Schools Association. We greatly appreciate the interest of the Senate Committee on Indian Affairs regarding the education of Indian students who attend public schools.

Enclosed are my responses to the hearing follow-up questions submitted to me by the committee. I also expanded on my response to the question at the hearing regarding our recommendation that Impact Aid be forward funded.

Please let me know if we can provide additional information or clarification. We look forward to working with the Senate Committee on Indian Affairs during the reauthorization of Impact Aid and other elementary and secondary education programs.

Sincerely

Brent D. Gish, President
National Indian Impacted Schools Association

Superintendent
Mahnomen Public School District, Minnesota
Box 319
Mahnomen, Minnesota 56557-0319
(218) 935 2211 (218) 935 5921 FAX

Enclosure
CC: Senator Daniel Inouye
Senator Paul Wellstone

A Member of the NAFIS Family

Question # 1 from the Committee. Legislation has been introduced (S.897) which authorized funds to be used as matching construction funds by LEAs qualifying for Impact Aid. The LEAs must come up with 50% matching funds before they qualify to receive any S.897 matching funds. In your opinion, how feasible is the assumption that LEAs serving large Indian populations will be able to come up with matching funds? Where would the LEAs get the matching funds?

Response: Yes, there would be a problem for school districts which have little or no bonding authority due to the presence of Indian trust and Alaska Native lands to come up with 50% match for school construction funding as proposed by S.897. (The bill does provide that in-kind contributions can count toward the 50% match.) Further, this bill limits the amount of a grant to \$3 million over a five year period. NIISA would certainly support 100% federal funding for school facility construction for school districts which have little or no bonding authority due to the presence of Indian trust and Alaska Native lands. And we would support lesser levels of support for those school districts who, while not being composed of 100% Indian trust lands, include a substantial amount of Indian lands.

That said, we would hope that the most heavily impacted Indian lands school districts could use the federal construction grant as envisioned by S.897 to leverage state construction funds. And we would hope that school districts which are comprised of a lesser amount of Indian trust lands, who have limited bonding authority, could combine federal funds with the modest amount that can be raised through a local construction bond and state funds.

State governments are under increased pressure to provide funding for school construction, an activity traditionally left up to the LEAs. The deterioration and overcrowding of our schools has rightfully gained great attention at the local, state and federal level. In some cases court decisions are linking the quality of a school system to the condition of its schools. Several states involved in finance litigation -- e.g., Ohio, Arizona -- have been forced by their state courts to revamp their systems of paying for construction and repair of schools. As a result some state legislatures have appropriated funding for school construction in the past few years (not that it meets the entire need, however).

While Congress cannot force state governments to provide funding to LEAs for school construction and repair, it can provide incentives through federal grants, tax credits and tax exempt bonds and thereby forge state/local/federal government partnerships to address school facility needs.

Question #2 from the Committee We heard strong testimony regarding the negative impact of equalization on New Mexico LEAs. Why do LEAs in other state not experience similar problems with equalization?

Response States cannot equalize or offset federal Impact Aid dollars against state aid to an LEA unless it has in effect a program of State aid that equalizes expenditures for public education among LEAs and which meets a "disparity test".

While we do not have information by state, it is likely that many states do not meet this test. Under the disparity test as set out in the Impact Aid law, a state can offset an LEAs Impact Aid funding only if there is no more that a 20% disparity in per-pupil funding among schools in the state between the 5th to the 95th percentile. (Prior to FY 1998 the disparity test was 25%.) The Department of Education considers only operating revenues/expenses when determining whether a state equalizes, thus allowing gross inequities in funding of capital costs.

And, there may be states which would be eligible to "equalize" Impact Aid dollars but believe that it would be unfair, not be worth the trouble, or politically impossible to achieve. For that, we are grateful.

Question #(3) from the committee Impact aid requires LEAs to involve parents and tribes in the developoment of Indian Policies and Procedures. Your testimony indicates your support for this continued for this provision which the administration's bill eliminates;

Question (a) Can you tell us how the "Indian Policies and Procedures" provision actually operates in Indian Country?

Response: The Indian Policies and Procedures (IPP) provision of the Impact Aid law is designed to benefit the Tribal officials and Indian communities served by public school districts that receive Impact Aid by ensuring the equal participation of Indian children in the academic and extra-curricular programs of their school. The IPPs are written policies and procedures adopted by the Local Education Agency describing how the district will meet minimum standards as set forth in the law. To accomplish this, the LEA makes available all pertinent documents including the Impact Aid application and information on programs supported by Impact Aid funds to the Indian community and solicits comments and recommendations. If necessary, programs are modified to ensure the equal participation of Indian children. Most often, differences between the LEA and the Indian community are resolved through this informal process. In the event of an impasse, tribal governments may file an administrative appeal to the Department of Education. The Department may withhold funds or take other appropriate action.

Question (b) What type of matters are parents and tribes consulted about?

Response: Parents and tribes are consulted about any/all programs offered or sponsored by the school district which are funded or supported by Impact Aid revenue. Because in many cases Impact Aid is used for the general operation of the school district, it can be concluded that parents and tribal officials would have the right to comment or make recommendations on any program offered by the district. LEAs are required to provide a copy of the Impact Aid application to the tribal government and to Indian parents.

Question (c) Who does the LEA contact since the provision does not specify Tribal governments but only Indian tribes?

Response: We view the term "Indian tribe" in the statute as meaning tribal government. It is typical for the LEA to consult with Local Indian Parent Committees which are elected to represent Indian parents and their concerns in the school district. To be elected to the Parent Committee, you must be a parent, a grandparent or legal guardian of a student enrolled in the school district. In many cases the Tribal governments will appoint the Indian Parent Committee as their designee in dealing with the programs and concerns of the local school district.

Question (d) Overall, LEAs have the final word on how Impact Aid funds are to be used. How much weight do LEAs give to the input of tribes?

Response: There are many factors which come into play when LEAs consider input from any group of local constituents or government entity. As a recipient of Impact Aid because of federal presence in Indian and Alaska Native lands, LEAs have a legal responsibility to consult with Indian parents and tribes to ensure equal access to all school district programs and to consult with them on the educational needs of Indian children. All input is given consideration based on its merit, legal consideration, budgetary consideration, and how it applies to the mission, goals and objectives of the district.

Question (4) As a percentage of Annual budgets, how important is Impact Aid to schools in Indian Country?

Response: The percentage of a LEAs annual budget which Impact Aid represents varies greatly in Indian Country. It may represent a very small percentage in schools with low impactation to over 50% of a districts general operating funds. Loss of Impact Aid would therefore mean the cutting of basic educational programs and student services for a school with few impacted students to closing the schools for districts which are highly impacted by federal presence.

The Impact Aid Program Should be Forward Funded. We would like to respond more fully to the comments at the hearing regarding the NIISA recommendation that the Impact Aid program be forward funded. It is a fact that most federal elementary and secondary education programs are already forward funded. Impact Aid is the big exception. The reason Congress has forward funded education programs is so school districts can know 9-12 months in advance how much funding they will receive and to shield school programs from the interruptions caused by late action on funding bills. Forward funding is used for Title I, IDEA vocational education and the BIA school system, among other programs. Schools need to make curricula plans and to sign teacher contracts and do prudent budgetary planning. Our testimony points out that LEAs are required by Minnesota state law to sign contracts for tenured teachers by April 15th for the following school term. This requires us to make risky personnel decisions/commitments before our Impact Aid funds are ever appropriated.

Impact Aid funds are basic operating funds similar to the school operations funds for the BIA-system schools. For heavily impacted schools, the fact that Impact Aid program is not forward funded is especially problematic.

We realize that in the FY 2000 Education budget Congress has deferred funding for a number of education programs as a bookkeeping strategy so that this funding does not count against the FY 2000 allocation. This deferring of funding is not the same as forward funding, although some publications have incorrectly referred to it as forward funding.

Forward funding requires a double appropriation in the transition year only. After that funding is provided one year at a time. We have proposed that if Congress cannot forward fund all of the Impact Aid program in one year, that it consider forward funding at least the Basic Program support part of the program. And it could be forward funded for 9 months instead of 12 months, thus lessening the budget impact of the first transition year.

Testimony of
John W. Tippeconnic III

On the Reauthorization of the
Elementary and Secondary Education Act
Indian Education

Submitted to
Committee on Indian Affairs
United States Senate

October 27, 1999

Mr. Chairman and members of the Committee on Indian Affairs:

Thank you for inviting me to testify today. My name is John W. Tippeconnic III, Ph.D. I am Professor of Education at Penn State University and also the Director of the American Indian Leadership Program. I am a member of the Comanche Tribe and I am also part Cherokee. I have been an active participant in Indian education for over 30 years – as a classroom teacher, administrator, and now as a professor. I attended BIA, public, and mission schools and worked at a tribally controlled institution.

It is an honor to be here to address the education of American Indians and Alaska Natives in this country, especially in the context of the reauthorization of the Elementary and Secondary Education Act (ESEA). I trust this Committee has the best interest of Indian country in mind and will provide the necessary leadership and action to ensure that the Indian education provisions of the ESEA continue to provide educational opportunities for the approximately 600,000 Indian youth and adults in education programs throughout this country.

We have made progress in the education of American Indians and Alaska Natives since 1969 when the Senate Special Subcommittee on Indian Education, known as the “Kennedy Report” recommended a comprehensive piece of legislation be enacted by Congress to meet the educational needs of Indian students. The Indian Education Act of 1972, along with other legislation, other initiatives, and the hard and dedicated work of many people, including Indian people, helped to bring about this overall progress. Today there are many Indian students doing well in school. We also know there are:

- . more parents involved in the education of their children
- . there are more Indian teachers, administrators, counselors, professors and other educators
- . more of the curriculum reflects tribal cultures, languages and histories
- . there is a growing body of Indian education research, and
- . there is more tribal control of education – with over 30 tribal colleges and over 110 tribally controlled schools.

There are more success stories today and we have a better understanding of what works in the education of American Indians and Alaska Natives. Often that knowledge base exists in practice and in the minds and experiences of educators. As I will mention later, we need to get more of the success stories documented as best practices and research findings.

However, as we all know, we are not where we want to be in Indian education. There continues to be far too many students who are not doing well in school. As documented in the Indian Nations at Risk Report (1991), the White House Conference on Indian Education Report (1992), the Comprehensive Policy Statement on Indian Education (1997), the Executive Order on American Indian and Alaska Native Education (1998), and the National Center for Education Statistics reports, we continue to have high drop out rates, low academic achievement, the lack of parental involvement, the lack of relevant cultural education, alcohol and substance abuse problems, the need for more Indian teachers, administrators, counselors, professors, and other educators. Much remains to be done before we can claim widespread success across Indian country. Thus,

it is critical that the Indian education provisions of ESEA be reauthorized so that progress will continue in the future.

I will start my discussion by emphasizing to the Committee that the education of American Indians and Alaska Natives takes place in a very difficult and complex environment today. Providing quality education is not easy and continues to present difficult challenges when you consider the diversity among tribes and the roles and responsibilities of local, state, tribal and national governments. The complexity is further compounded by the historical, political, economic, health, and social factors that also influence how Indian students learn and how they are taught in schools. All this points to the need to address Indian education from comprehensive and collaborative strategies that are based on research, best practices, consultation and respect and acknowledgement of the Federal responsibility in Indian education and the federal policy of tribal self-determination in Indian education.

Comprehensive Approach

I suggest that the reauthorization of ESEA/Title IX maintain and strengthen its comprehensive broad based approach to meeting the wide array of educational needs of American Indians and Alaska Natives by providing opportunities at all levels of education - from early childhood to graduate school, including adult education. This comprehensive approach has been the strength of Title IX from the beginning when the Indian Education Act was passed in 1972. This comprehensive approach provided opportunities and the necessary flexibility for students, schools, tribes, Indian organizations and institutions, and colleges and universities to provide services to meet

local educational needs. In my opinion, a fundamental change in ESEA/Title IX will occur if programs, as being proposed, are eliminated from the law. It is a shame that, in recent years, budget requests and appropriations did not support the comprehensive vision of the authorizing committees in Congress. A lack of appropriated funds does not mean that needs do not exist in Indian education. A comprehensive approach is necessary to continue our success in Indian education.

Research is Essential

I strongly recommend that research be emphasized and promoted in the reauthorization of ESEA/Title IX. Research is critical today given the national emphasis on accountability, quality, results, standards and student assessment. More importantly, research is essential to the improvement of teaching and student learning, including student academic achievement. We must keep and strengthen the “National Research Activities” section of the law. We do this by moving beyond evaluations, the collection and analyses of baseline data and the identification of effective approaches. These activities are important and they should continue in a collaborative fashion between NCES, OERI, OIE and other federal agencies. However, both quantitative and qualitative applied research efforts, with academic rigor, are needed that focus on research questions that address teaching and student learning issues. This type of research will not only inform practice but, hopefully, will impact policy and appropriations. The research forums currently being held as a result of the Presidential Executive Order 13096 on American Indian and Alaska Native Education will be helpful in determining the important research questions to ask and answer in the near future.

It is encouraging to note that there is a great deal of interest in Indian education research with more American Indian and Alaska Natives conducting research. The National Indian Education Association (NIEA), the American Educational Research Association (AERA), the Comprehensive Policy Statement on Indian Education (Red Book), and the Presidential Executive Order 13096 on American Indian and Alaska Native Education all promote research. The Comprehensive Federal Indian Education Policy Statement makes a number of suggestions that are worthy of consideration for inclusion in the reauthorization of ESEA. Among them are:

- the establishment of a national center for Indian education research
- building tribal capacity to conduct and be involved in educational research (Indian people should be doing more of the research)
- ensuring research protocol is respected, and
- accurate and reliable data are used in the research process.

Parent Involvement

Without question, parent involvement has been strength of Title IX. Parent committees have given parents a voice with authority in the operation of Indian education programs and have provided the entry point for many parents to be involved in the education of their children. However, we know that parent involvement continues to be a challenge for most programs in at least three ways: 1) getting more parents involved in the parent committees, 2) getting the regular classroom teachers involved with the parent committees and with parents in general, and 3) getting parents to be involved in the daily school activities of their children.

If the formula grant program to LEAs requires a comprehensive program approach to meeting the needs of Indian children (including impacting Title I and regular classroom teachers) then it only makes sense that the parent committee's role and responsibility also be comprehensive and go beyond the formula grant supplemental program. I think there should be some language in the reauthorization that requires LEAs to coordinate parent committees with other governance bodies and facilitate parent committee involvement with regular classroom teachers. After all, regular classroom teachers have the responsibility to teach all their students so the LEA and state standards are achieved.

Other Formula Grant Concerns

A strength and weakness of the formula grant program has been the supplemental approach at the school level. A strength is that an Indian education presence has been established at the LEA level that addresses the culturally related academic needs of American Indian students. A lot of good things are happening with students, parents, and Indian professionals in schools and I am not recommending that the supplemental approach be changed. However, the impact on the total school and students seems to vary by site. A weakness of the program and of the legislation is that the active involvement of the regular classroom teacher is missing. As I already mentioned, it is critical that regular classroom teachers be more actively involved in the formula grant programs.

Provide Higher Education Support

An initial strength of the program that in time became a weakness was providing

opportunities for colleges and universities to prepare American Indians and Alaska Natives to become educators, including teachers, administrators, counselors and to become professionals in the fields of medicine, psychology, law, engineering, business administration, natural resources, education and related fields. The strengths and weaknesses of the programs are, unfortunately, directly related to funding. Although there are more American Indians and Alaska Natives attending universities and colleges today (approximately 130,000), the need for American Indian and Alaska Native teachers, administrators, counselors, and other professionals is well documented in the literature. The current provisions in the law in Subpart 2 "Special Programs and Projects to Improve Educational Opportunities" are adequate and should remain. I am pleased that the Department of Education ran a competition this year for demonstration and professional development grants. I also recommend that the "Fellowship Program for Indian Students" remain part of the Title IX reauthorization. The Fellowship Program provides students a choice of colleges and universities to earn a degree plus a choice of being a part of an institutional funded program or an individual fellowship. Also, fellowships develop Indian professionals outside of education.

Strengthen Tribal Involvement and Capacity

I strongly recommend that the section providing "Grants to Tribes for Education Administrative Planning and Development" be retained and strengthened in the reauthorization. Tribes are key partners in the education of their tribal members. This is especially true given the federal responsibility in Indian education, the government-to-government relationship, and the federal policy of tribal self-determination. Any

comprehensive, collaborative or partnership effort in Indian education must involve tribes. The lack of funding and/or shifting this responsibility to the Department of Interior are not valid reasons to do away with this provision. Rather, efforts should be made to obtain funding to support, implement and to help build tribal capacities in education, especially tribal departments of education.

Adult Education

I also recommend that the section, "Special Programs Relating to Adult Education for Indians" be retained in the reauthorization. In my opinion, when funds were available, adult education was one of the more successful programs of Title IX. The 1993 NACIE Annual Report indicated there were 27 adult education awards that served 5,079 students. In 1990 the high school graduation rate for American Indians was 66 percent, compared to 75 percent for the general population. This means a significant number of students did not complete high school. Adult education or the GED becomes a viable option for these students. There is still a need in adult education, only funding is lacking.

Other Suggestions

- . Retain the provisions for the National Advisory Council on Indian Education (NACIE).
- . Encourage the use of technology in the formula grant program to LEAs.
- . Ensure the Comprehensive Regional Assistance Centers provide technical assistance to Indian education grantees.

Conclusion

We have seen progress in the education of American Indians and Alaska Native over the past 27 years. Progress will continue and will be greatly facilitated if the ESEA continues to provide Indian education opportunities using a comprehensive approach - from early childhood education to graduate school, including adult education. This will result in even greater progress in the future with more American Indians assuming leadership roles in education. Thank you.

Testimony of

John W. Tippeconnic III

Supplemental Questions

On the Reauthorization of the
Elementary and Secondary Education Act
Indian Education

Submitted to
Committee on Indian Affairs
United States Senate

November 16, 1999

Question 1. You touched on research in your testimony. Given the current national emphasis on accountability, quality, results, standards and student assessment, can you shed some light as to what you see are the strengths and weaknesses to this point of the promotion and conduct of qualitative and quantitative statistics focused on Indian education?

Response. Educational research in Indian education is essential if the education of American Indians and Alaska Natives is to improve in the future so that more students are successful in public, BIA, tribal and other schools. Indian education research is especially critical today given the national emphasis by states and the federal government on accountability, quality, results, standards and assessment. The educational environment in schools and communities is further complicated by different tribal cultures and languages and economic, social, health, political, and educational factors that impact students and their families. Without research we are left with narratives and anotal stories that may be true but are often unacceptable to educators, politicians, and other decision-makers.

We need accurate and reliable baseline data on which to forecast trends, improve practice, justify budgets and programs, and make comparisons with others. We need a national center to house research data and to make it available to schools, educators, researchers, tribes and others who are working to improve Indian education.

In addition, we need a national research agenda that will focus on specific research about how Indian students learn, what they learn, and how they are taught. Both quantitative and qualitative research studies are needed to understand how the factors mentioned above influence student learning and teaching. The Presidential Executive Order 13096, based on the Comprehensive Federal Indian Education Policy Statement

(Red Book), is facilitating a national research agenda in Indian education. This agenda plus the contents of the Red Book need to be considered and implemented with support from the Congress and the Administration.

It is also critical, in adherence to the policy of tribal self-determination, that more resources be allocated to tribes, Indian organizations, Indian colleges and universities, tribal schools, higher education institutions, and individual Indian scholars to conduct research studies. It is likely that this type of research will have important practical value that will help improve education for many more Indian students.

Recommendations

Promote and authorize more Indian education research. Use strategies in the reauthorization of ESEA that provide research resources to federal agencies and outside groups (see below) and that take into consideration the recommendations in the Comprehensive Federal Indian Education Policy Statement (Red Book). Among them are:

1. the establishment of a national center for Indian education research
2. building tribal capacity to conduct and be involved in educational research
(Indian people should be doing more of the research)
3. ensuring research protocol is respected, and
4. accurate and reliable data are used in the research process.

Question 2. In your opinion, could you give an evaluation of the collaborative fashion of gathering data and statistics within the Department of Education's National Center for Educational Statistics, Office of Educational Research and Improvement and other federal research entities responsible for national research initiatives? Do you think that research and data collection would be better suited and should be contracted to independent, private research groups to ensure that Indian education receives equitable emphasis and similar applied research efforts as other ethnic minority groups in research?

Response. It is positive and a strength that OERI, NCES, OIE and other federal agencies are including American Indians and Alaska Natives in educational research. NCES's publications *American Indians and Alaska Natives in Postsecondary Education* (1998) and *Characteristics of American Indian and Alaska Native Education* (1995) are worthwhile and offer valuable information to practitioners and researchers as long as we recognize the limitations of the data, e.g., self-identification issues, lack of tribal specific data, etc. Too often Indian education data is left out completely or included in an "other" category because of small sample sizes, lack of interest, or the lack of resources to oversample American Indians and Alaska Native students. The result is either no data or data is not very reliable.

Also, OERI included small research studies at two of their institutes; the Center for Research on the Education of Students Placed At Risk (CRESPAR) at Johns Hopkins University/Howard University and the Center for Research on Education, Diversity & Excellence (CREDE) at the University of California, Santa Cruz. The inclusion of Indian education research is a strength. Any national research study sponsored by the U.S. Department of Education should include American Indians and Alaska Natives,

especially if the studies focus on cultural and linguistic difference populations.

However, the efforts by OERI and NCES are not enough. The level of support is considered a weakness. Both agencies need to increase their support for Indian education research. There needs to be more research supported by OERI and NCES funds that are requested in their budgets rather than relying on the Office of Indian Education (OIE) to request funds, this is especially true in the NCES efforts. In my opinion, Indian education research is not sufficiently considered or supported in the OERI efforts, with one or two small research projects as a part of their national at-risk institutes. Too often, Indian education research is not considered a priority at the national level. It should be more of a priority with conscience efforts to include Indian students in all minority and/or at-risk student studies.

Can Indian education be better suited and served by contracting to independent, private research groups to ensure increased emphasis and equitable emphasis compared to other minority groups. My response is "yes." In my opinion there is great potential in this strategy. Educational resources should be made available to independent and private research groups, tribes, tribal colleges and universities, higher education institutions with Indian education programs and faculty, tribal schools, and to individuals. Funds should be made available to Indian people, including individuals, to conduct Indian education research, especially applied research. There is a growing body of literature in Indian education that is based on research, we need to build on this and address research questions that improve teaching and learning. For example, Donna Deyhle and Karen Swisher (1997) conclude in their article *Research in American Indian and Alaska Native*

Education: From Assimilation to Self-Determination that research has made a difference, especially research that is based on cultural strengths and cultural integrity.

At the same time, OERI and NCES should continue to include American Indians and Alaska Natives in their longitudinal and other studies using their own appropriated funds. Other funding should be made available to support a national research agenda in Indian education.

Recommendations

Keep and strengthen the “National Research Activities” section of the law. I recommend that the evaluations, the collection and analyses of baseline data and the identification of effective approaches be the primary functions of NCES and OERI. These activities are important and they should continue in a collaborative fashion between NCES, OERI, OIE, OIEP and other federal agencies.

The law can be strengthened by adding language that authorizes both quantitative and qualitative applied research efforts that address teaching and student learning at all levels of education, from early childhood to graduate school. The Indian education research agenda currently being developed as a result of the Presidential Executive Order (13096) on American Indian and Alaska Native Education will be helpful in determining the research questions that need to be answered in the future. Funds for this section should be administered by OIE, in collaboration with OERI and OIEP, with independent and private research groups, tribes, tribal colleges and universities, higher education institutions with Indian education programs and faculty, tribal schools, and to individuals as eligible recipients for research grants.

Question 3. I asked you as a former Director of OIEP “how would you describe the working relationship and coordination between the Department and BIA as it relates to Indian education?” You replied, “Difficulty.” Could you elaborate on your answer and offer suggestions or comments in your opinion that could be considered in this reauthorization effort in alignment with the Indian Education Executive Order 13096 and the Comprehensive Policy Statement on Indian Education.

Response. The relationship between the U.S. Department of Education and the BIA’s Office of Indian Education can be characterized as difficult and challenging with limited opportunities for meaningful dialogue and communication. In my opinion, communication is the key to improve the relationship. Communication often is dependent on leadership in OIE and OIEP and occurs most often on an as needed basis. At times, the relationship tends to focus on flow-through funds (Title I, Special Education, Title IX, etc.) with emphasis on compliance issues. There appears to be a general feeling by the U.S. Department of Education that the BIA is not able to administer the funds and programs in a professional and competent way. The BIA, in this regard, is treated like a state educational agency (SEA) rather than a federal agency.

The Comprehensive Policy Statement on Indian Education (Red Book) recognized the fragmentation and lack of coordination among federal agencies when Indian education programs, policies and funding were considered. The Presidential Executive Order (13096) calls for “a comprehensive Federal response...to address the fragmentation of

government services available to American Indian and Alaska Native students.” An Interagency Task Force was established with representation from different federal agencies. The task force is co-chaired by Assistant Secretaries from Interior and the U.S. Department of Education.

Recommendation

Consider language in the reauthorization that will create an Interagency Task Force or Coordinating Indian Education Group that will be co-chaired by the U.S. Department of Education and BIA to coordinate and improve Indian education efforts across federal agencies, including OIEP and OIE. Require constant communication to take place between the two federal agencies to address policy, program, budget, research and educational improvement issues.

**Preface to the Comprehensive Federal
Indian Education Policy Statement**

Who Will Benefit?

- Over 600,000 individual American Indians and Alaska Natives who are enrolled in formal education programs - from early childhood to graduate study - in the United States. These students, like all Americans, deserve world class education. Indian students, more so than most Americans, depend on the federal government to provide quality education.
- Over 550 Indian tribes who recognize the importance of education, seek opportunities to become more involved, and want to assume greater control of the education of their tribal members.
- Federal agencies who will have a comprehensive and coordinated approach to improve Indian education based on a policy statement defined by Indian country.

Intent

- The intent of the policy statement is to set national guidelines in Indian education for federal agencies, including the Departments of Education, Interior, Health and Human Services, Agriculture, Commerce, and Labor. Guidelines will direct and define federal agency implementation of existing congressional and executive branch Indian education policies and mandates in a coordinated and comprehensive manner.
- The policy statement will provide direction for new Indian education initiatives from Congress and the Administration, including budget appropriations.
- Ultimately, the policy statement will help ensure that all Indian students achieve academic success in schools in an environment of increased tribal involvement and control.

Importance of the Policy Statement

- To improve the quality of Indian education. The history of Indian education has been difficult. The Meriam Report (1928) and the Kennedy Report (1969) documented the failure of formal education and called for more Indian involvement, control, and relevancy in the educational process. The Indian Nations At Risk Task Force (1991) recognized "twenty years of progress" during the 1970-80s, but concluded that Indian communities were "nations at risk" educationally. The White House Conference on Indian Education (1992) reached similar conclusions and made specific recommendations for improvement.
- To continue making progress in Indian education using a comprehensive policy framework that reflects the views of Indian people.

- To better coordinate Indian education at the federal level. Current Indian education policies are fragmented among various treaties, statutes, agencies, and programs. Coordination of the policies and programs rarely takes place as do efforts to promote tribal / federal partnerships.
- To ensure that Indian education and Indian students are included in major national education initiatives. Too often Indian education or Indian students are excluded.
- To facilitate educational reform and achieve Indian student academic success.
- To help ensure greater federal responsiveness, responsibility, and accountability in Indian education.
- To reaffirm the federal responsibility for Indian education that is based on treaties, congressional legislation, court decisions, and executive branch actions.

Content of the Policy Statement

- Recognizes and supports tribal sovereignty, treaty rights, the government-to-government relationship between the United States and Indian nations, the trust relationship of the federal government with Indian people, and Indian self-determination as the immutable foundation for the comprehensive policy statement.
- Promotes tribal languages and cultures, tribal control of education, Indian education standards, quality Indian education and educational research, tribal consultation, and accountability as the basis for student academic success. A strength of the policy statement is its comprehensive, unifying nature, and inclusion of all Indian students.

Development of the Policy Statement

- The genesis of the policy statement arose after President Clinton's White House meeting with tribal leaders on April 29, 1994.
- After a series of meetings at the White House on Indian education, it was agreed that a comprehensive federal Indian education policy would assist federal agencies and tribes in working together to improve Indian education. Further, the policy statement had to be defined by Indian country, not the federal government.
- Tribal leaders and Indian educators developed the policy statement based on extensive research and comments gathered in Indian country over the past two years. Collaborative leadership was provided by the National Congress of American Indians (NCAI), the National Indian Education Association (NIEA), the Native American Rights Fund (NARF), and the National Advisory Council on Indian Education (NACIE).
- Numerous tribes and Indian organizations have endorsed the policy statement. See the inside back page of this booklet for a listing of those who have endorsed the statement to date.

COMPREHENSIVE FEDERAL INDIAN EDUCATION POLICY STATEMENT

INTRODUCTION

American Indian and Alaska Native tribes are sovereign nations. The United States Constitution, treaties, and other federal laws confirm the inherent sovereignty of Indian nations. Tribal sovereignty is the basis for the government-to-government relationship between Indian nations and the United States. The United States also has a trust relationship with Indian nations. Tribal sovereignty and the unique federal-tribal relationship differentiate Indian nations legally and politically from all other entities.

The United States Congress affirms that Indian education rights are inherent in tribal sovereignty and are part of the government-to-government relationship and the trust relationship. Under treaties, statutes, and executive orders the federal government has the responsibility to provide education to American Indians and Alaska Natives and to transfer control of education to those tribes that seek it. Indian education policies are fragmented among various statutes, orders, proclamations, agencies, and programs. Implementation of these policies by federal agencies is misaligned, poorly executed, or even nonexistent.

Federal agencies must implement Indian education policies, programs, and funding in a manner that upholds and enhances congressional and executive mandates. Federal Indian education policy implementation must provide tribes with the resources for linking schools, tribal traditions, knowledge, values, and health and social needs under a holistic, student-centered approach. Policy implementation must also support tribal decisions on the use of education to preserve tribal homelands, governments, languages, cultures, economies, and social structures.

Indian nations have the biggest stake in Indian education because their children are their future. Quality education opportunities and strengthening educational achievement must be the goals of all education systems that serve Indian students. Upon tribal request, all education systems that serve Indian students must incorporate tribal involvement, allow tribal decision-making, and be accountable to tribes. The resource of human potential represented by emerging generations of native children can not be wasted or stunted because education policies are poorly implemented or ignored. The recognition of tribal sovereignty and the importance of native culture by the federal government are fundamental to improving federal Indian education policy implementation.

This comprehensive policy is intended to make the federal government support tribal involvement in Indian education as provided in existing federal laws. Implementing the policy will facilitate increased federal agency and program accountability to tribes for Indian education.

POLICY:**RECOGNITION AND SUPPORT OF TRIBAL SOVEREIGNTY**

- A. Federal agencies shall recognize and support the inherent sovereignty of all American Indian and Alaska Native tribes including, but not limited to, the rights of American Indian and Alaska Native tribes to self-determination and self-government. Federal agencies shall also recognize and support the government-to-government relationship between American Indian and Alaska Native tribal governments and the United States. In recognizing these attributes of tribal sovereignty, federal agencies shall consult and work directly with tribal governments on education issues that affect Indian students by:
1. developing an institutional knowledge that tribes retain significant amounts of sovereignty from their original status as independent nations; that tribal sovereignty is, thus, inherent and not delegated; that tribes retain all attributes of sovereignty not otherwise relinquished; that the sovereignty retained by American Indian and Alaska Native tribes includes, but is not limited to, power and authority over education, that the United States government continues to affirm tribal sovereignty, self-determination, and self-government in numerous treaties, congressional agreements, executive orders, and court decisions as well as congressional acts;
 2. developing an institutional knowledge that native languages, cultures, and traditions are extremely diverse and unique, and occupy an unparalleled status in the history and law of the United States as the original languages, cultures, and traditions of North America;
 3. developing an institutional capacity to identify, research, plan for, and address general Indian concerns regarding education as well as those concerns unique to each individual American Indian and Alaska Native tribal government; and
 4. assigning specific staff positions and employees to coordinate each federal agency's work with tribal governments, departments, and agencies and with federal-tribal partnerships.

RECOGNITION AND SUPPORT OF SELF-DETERMINATION

- B. Upon tribal request, federal agencies shall take steps to encourage and assist tribes to assume control of education programs and governance of Indian education by:
1. negotiating with individual tribal governments to transfer education programs, funding, functions, services, facilities, and administrative responsibilities to tribes;
 2. providing direct funding for tribal education departments;
 3. supporting tribal control of Indian education by allowing tribes the freedom and self-determination to develop their own curricula and education standards, their own requirements for and certification of educators and administrators without excessive accountability to the federal government or with accountability using requirements and standards developed by individual tribes and tribal organizations;
 4. providing staff and technical assistance to tribal governments for developing, monitoring, and enforcing education codes and program administration capabilities; and
 5. implementing procedures that are necessary to provide direct funding for tribal education departments, without excessive accountability, and to assist tribes with program administration and education governance.

SUPPORT OF NATIVE LANGUAGES AND CULTURES

- C. Upon tribal request, federal agencies shall take steps to preserve, protect, and promote native languages and cultures, including:
1. providing direct funding to tribes and Indian education programs for developing, certifying, and maintaining native language and culture programs and curricula;
 2. providing staff and technical assistance to tribes and Indian education programs for developing, certifying, and evaluating native language and culture programs and curricula;
 3. transferring native language and culture programs and funding to tribes to use at each tribe's discretion in schools and education programs at any level;

4. encouraging non-tribal governments and entities serving Indian students to recognize the unique status of native languages and cultures, to include native languages and cultures in programs and curricula upon tribal request, and to grant full academic credit and fulfillment of entrance or degree requirements to native language and culture courses; and
5. encouraging states to provide for appropriate certification of instructors of native language and culture, including allowing / accepting tribal certification of native language and culture instructors.

FEDERAL - TRIBAL CONSULTATION PROCESS

- D. Federal agencies shall take steps to improve the statutory and executive tribal consultation process with the goal of obtaining the consent of tribal governments whenever proposed federal actions, policies, rules, or decisions affect Indian education, including:
 1. directly and timely consulting with tribal governments and Indian education entities regarding all proposed education actions, policy developments, rulemaking, and decisions;
 2. promptly summarizing consultation results and reporting to tribes and Indian education entities on actions that agencies will take to implement the recommendations of tribes and programs that resulted from consultations;
 3. encouraging tribal representatives to meet with federal agencies to ensure tribal directives are being implemented; and
 4. organizing and funding federal / tribal partnerships to review and improve the consultation process.

RECOGNITION AND SUPPORT OF TRIBAL EDUCATION LAWS

- E. Federal agencies shall work with tribal education departments within the tribal governments to provide support to establish and further develop each tribe's education code and ensure that all non-tribal governments and entities come into compliance with each tribe's education laws by:
 1. requiring such compliance in relevant regulations; and,

2. assisting tribal governments to develop enforcement capabilities and cooperative plans / agreements with non-tribal governments and entities to overcome compliance problems.

ROLES OF BOARDS, EDUCATORS, AND PARENTS

- F. Federal agencies shall recognize the key roles of school boards, post-secondary boards, educators, and parents in schools and education programs that are operated through tribes / non-tribal governments and entities by:
 1. upon tribal request, facilitating discussions and planning among tribal governments, boards, educators, and parents that clarify the important roles of each in Indian education; and
 2. upon tribal request, using the results of discussions and planning to enhance the important roles of tribal governments, boards, educators, and parents in Indian education.

INDIAN EDUCATION OUTSIDE OF INDIAN COUNTRY

- G. Federal agencies shall carry out statutory obligations to provide education to Indian students residing outside of Indian country by:
 1. implementing the decisions of Indian parent committees and Indian boards regarding education programs and funding; and,
 2. recognizing and supporting decisions of tribes regarding their members who are students residing outside of Indian country.

COOPERATIVE INTER-GOVERNMENTAL AGREEMENTS

- H. Upon tribal request, federal agencies shall take steps to foster cooperative / reciprocal education agreements between tribal governments and non-tribal governments and entities by:
 1. facilitating discussions and planning among tribes, non-tribal governments and entities, and education organizations to clarify the important responsibilities of each in Indian education;
 2. providing funding, staff, and technical assistance to tribal governments for infrastructure that supports inter-governmental education agreements;

3. implementing federal incentives for establishing and complying with education agreements between tribal governments and non-tribal governments and entities; and,
4. for tribes that seek such responsibility, requiring a transition to tribal control of Indian education programs and funding, and assisting tribes to develop the capacities necessary to make the transition successful.

ESTABLISHMENT AND ACKNOWLEDGEMENT OF INDIAN EDUCATION STANDARDS

- I. Upon tribal request, federal agencies shall recognize, fund, and work with tribal governments as the entities for setting education standards in schools and programs serving Indian students by:
 1. recognizing that tribes can exercise primary authority, pursuant to their inherent sovereignty as confirmed in and with guidance from federal law, to set education standards in schools and programs serving Indian students;
 2. developing a record to document all education standards, policies, practices and decisions that affect American Indian and Alaska Native students and providing that record for review by tribal governments;
 3. providing direct funding, staff, and technical assistance to tribal governments to establish, monitor, and enforce tribal education standards;
 4. assisting tribal governments to use or incorporate tribal education standards in schools and programs; and
 5. directly involving tribal governments and incorporating tribal input in future federal actions, decision-making, policy development and rulemaking that affect education standards for American Indian and Alaska Native students.

INDIAN EDUCATION RESEARCH AND ANALYSIS

- J. Federal agencies shall compile and organize research data bases, and shall assist tribal governments to conduct research and to establish and maintain data bases

that accurately describe Indian education by:

1. recognizing tribal laws that require Indian education research to be conducted with the consent of and in partnership with tribal governments;
2. upon tribal request, providing direct funding, staff, and technical assistance to tribes to develop and maintain tribal capacities to research Indian education;
3. documenting Indian student performance, needs, and progress as well as documenting Indian education programs' performance, needs, and progress;
4. making available research, information, and analyses to use as descriptions and baselines for evaluating education programs and Indian student needs and achievement;
5. making available research, information, and analyses regarding the best education practices, materials, assessment practices, and initiatives that are relevant for Indian students;
6. making available research, information, and analyses regarding infrastructure needs, improvements, and funding that are required to maintain, renovate, or replace schools and other education facilities that serve Indian students;
7. establishing an American Indian and Alaska Native ethnic / racial category for all research, information, and analyses efforts, and, where possible, establishing tribe-specific categories;
8. facilitating a national center for Indian education research to avoid redundant efforts and increase the accessibility of successful programs, practices, and materials in Indian education;
9. establishing a national center for information regarding distance education opportunities for American Indians and Alaska Natives in remote areas; and
10. establishing a clearinghouse connected with a major research university for educational concerns common to Indian people throughout North America.

REMOVAL OF PROCEDURAL IMPEDIMENTS

K. Federal agencies shall take steps to remove or waive procedural impediments to working directly and effectively with tribal governments on Indian education by:

1. organizing and funding federal / tribal partnerships to identify such impediments and recommend removal or waiver options;
2. establishing a process for implementing tribal government requests that procedural impediments / regulations be removed or waived in favor of tribal procedures; and,
3. directly involving tribal governments in future education policy developments and rulemaking to ensure that new impediments are not created.

PLANNING, BUDGETING, AND ADMINISTRATION OF INDIAN EDUCATION PROGRAMS

L. Federal agencies shall directly involve tribal governments and Indian parent committees outside Indian country in future Indian education planning, budgeting, and administration by:

1. following consultation requirements and tribal priorities when planning, budgeting, and administering programs and when identifying program needs; and,
2. implementing Indian education policies when planning, budgeting, and administering programs and when identifying program needs.

REPORT TO CONGRESS AND TRIBAL GOVERNMENTS

M. Federal agencies shall regularly consult with and report to tribal governments and the Congress on each agency's annual activities in implementing federal Indian education policies. Such reporting shall include:

1. the level of program and funding for all Indian education programs and activities;
2. the level of programs and funding transferred to tribes;
3. the program and funding budgets, guidelines, criteria, consultation methods, and other procedures that were developed or revised to increase the transfer of programs and funding to tribes and to

increase tribal governance of education;

4. identification of the tribal requests for assistance, and the tribes, programs, and entities that were assisted to make education policy / program changes that protect and promote native language and culture programs and curricula;
5. the level of funding provided to and the number of tribes assisted to establish tribal education departments and to establish / enforce tribal education codes;
6. the program guidelines, criteria, consultation methods, and other procedures that were developed or revised that kept key roles for school boards, educators, and parents while enabling the transfer of education programs and funding to tribes upon request;
7. the program guidelines, criteria, and other procedures that were developed or revised that enable tribal governments to plan, monitor, and account for education programs and funding that are administered outside of Indian country, the number of tribes assisted, and the amount of direct funding that was provided per tribe for carrying out these responsibilities;
8. the number and type of cooperative and reciprocal education agreements that were established between tribal and non-tribal governments or entities; the programs and funding that were transferred to tribes; and, descriptions of non-tribal government education accountability to tribes;
9. descriptions of how improved Indian education standards were implemented in programs, and the number of tribes that were assisted through the implementation;
10. descriptions of the number of tribes assisted in developing education research capabilities, how research findings were used to implement education improvements in programs, and the number of tribes that were assisted using the increased research capabilities and education improvements;
11. the procedural impediments to tribal government control of education that were identified and the impediments that were removed or waived;
12. an analysis of the difference between Indian education program budgetary needs versus the actual level of appropriated funding,

identification of what program accomplishments were made, specific program deficiencies that could not be addressed within the funding level provided, and the number of tribes involved in documenting program needs and developing program budgets;

13. an assessment of each agency's success and difficulty in implementing this policy; and
14. the separate views of tribes regarding each agency's success and problems in implementing this policy.

**INDIAN TRIBES AND ORGANIZATIONS
ENDORING COMPREHENSIVE FEDERAL INDIAN EDUCATION
POLICY STATEMENT**

Affiliated Tribes of Northwest Indians (52 Tribes)
 American Indian Higher Education Consortium
 American Indian Science & Engineering Society
 Asa'carsarmiut Tribal Council
 Confederated Tribes of the Colville Reservation
 Eastern Band of Cherokee Indians
 Four State Intertribal Assembly (33 Tribes)
 Gila River Indian Community
 Hydaburg Cooperative Association Tribal Council
 InterTribal Council of Five Civilized Tribes (OK)
 Lac Courtes Oreilles Ojibwa Tribal Council
 Lower Elwha Tribal Council
 Mandan, Hidatsa & Arikara Nation
 Minnesota Indian Education Association
 Mississippi Band of Choctaw Indians
 Mooretown Rancheria
 National Congress of American Indians
 National Indian Impacted Schools Association
 National Indian Education Association
 National JOM Association
 National School Boards Association
 Native Village Council of Kluti-Kaah
 Native Village Council of Kotzebue, IRA Council
 Native Village Council of St. Michael, IRA Council
 Native Village Council of White Mountain, IRA Council
 Nisqually Indian Tribes
 Nome Eskimo Community
 North Dakota Association of Tribal Colleges
 North Dakota Indian Affairs Commission
 North Dakota Indian Education Association
 Oglala Sioux Tribe
 Paschal Sherman Indian School
 Rosebud Sioux Tribe
 Sac and Fox Nation
 Soboba Band of Mission Indians
 Susanville Indian Rancheria Tribal Business Council
 Tohono O'odham Education Department
 Tribal Education Contractors Association
 United National Indian Tribal Youth, Inc.
 United Tribes of North Dakota (5 Tribes)
 Washington State Indian Education Association
 Yakama Nation
 Yakutat Tlingit Tribe (Alaska)

National Indian Education Association
121 Oronoco Street
Alexandria, Virginia 22314

FOR MORE INFORMATION CONTACT: National Congress of American Indians (NCAI) at 2010 Massachusetts Ave., N.W., Second Floor, Washington, D.C. 20037 or, National Indian Education Association (NIEA) at 121 Oronoco St., Alexandria, VA

November 11, 1999

United States Senate
Committee on Indian Affairs
838 Hart Senate Office
Washington, DC 20510-6450

Dear Chairman Campbell and Members of the Committee:

As American Indian Leadership Program Fellows at the Pennsylvania State University, in Educational Administration and Special Education, we feel it is important to provide the Committee with our views regarding the proposed changes in the reauthorization of the *Elementary and Secondary Education Act*.

Our concerns evolve primarily around one item in particular. In the House version of the Act, it fails to include support for tribal education programs and/or tribal departments of education. While we recognize that this item has never been funded, we feel strongly that it is important to maintain this language within the Act for the following reasons:

1. It reaffirms the unique government-to-government relationship between American Indian tribes and the federal government in the area of education
2. It encourages the development, or further development, of tribal departments of education, thereby creating an opportunity for intra-agency cooperation and partnerships between tribal, state, and federal departments of education.
3. It serves as a vehicle for future financial support of tribal educational programming, regardless of the funding history.
4. American Indian tribes are more likely to understand the diverse educational needs of tribal children than are state or federal governments.

Please consider these points when rendering your decision on the language to be included in the final version of this Act.


We are also concerned about the proposed elimination of other items that are currently contained within the Act, including support for: gifted and talented programs; fellowships; and adult education programs. As with support for tribal education programs under this Act, we see the maintenance of language regarding these items as a vehicle for future financial support of American Indian specific programs within the school systems that service the unique cultural needs of our children.

We fully support the proposed changes that would provide in-service training to non-Indian personnel, but would hope that the language of the Act would reflect an accountability structure that includes American Indian participation in the decision making process from start to finish. Without such an accountability structure in place, we run the risk of non-inclusion in the very programs that are designed to address such issues.

Proposed changes to the counting method in BIA schools in commonsensical. We fully support the inclusion of such language in the final version of this Act.

We hope that our testimony provides you with a greater sense of the importance of this Act to our American Indian communities, and that you will do what you can to preserve our tribal governments' unique relationship with the federal government, especially in the area of education. Our children are our future.

Sincerely,



On behalf of The Pennsylvania State University
American Indian Leadership Program Fellows

Narcy Bañoe

Rosalie Brown Thunder

Kathy Campbell

Susan Faircloth

Karen Galloway

Victoria Hildebrand

Rose Matuszyny

Keith Neves

Juan Portley

Martin Reinhardt

Jonathan Stout

Carla Weisner

EXECUTIVE DIRECTOR

John E. Echniak

LITIGATION MANAGEMENT**COMMITTEE**K. Jerome Gottschalk
Yvonne T. Knight
Mark C. Tilden**ATTORNEYS**Walter R. Echo-Hawk
Tracy A. Labin
Melody L. McCoy
Don B. Miller
Steven C. Moore
Donald R. Wharton**RESEARCH ATTORNEY**

Kate Westberry

LAW OFFICE ADMINISTRATOR

Celsi A. Rios

DIRECTOR OF DEVELOPMENT

Mary Lu Prosser

GRANT WRITER/EDITOR

Ray Ramirez

Native American Rights Fund

1505 Broadway, Boulder, Colorado 80302-6296 • (303) 447-8760 • FAX (303) 443-7776

WASHINGTON OFFICE1712 N Street, N.W.
Washington, D.C. 20036-2976
(202) 785-4166
FAX (202) 622-0068**ATTORNEYS**Keith Harper
Robert M. Paragry
Lorne K. Babbey**ANCHORAGE OFFICE**420 L Street, Suite 506
Anchorage, AK 99501
(907) 276-0980
FAX (907) 276-2466**ATTORNEYS**Lawrence A. Aschardomster
Heather R. Kandel-Miller**RESEARCH ATTORNEY**

Eric D. Johnson

Website: www.narf.org

October 25, 1999

The Honorable Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
United States Senate
838 Senate Hart Office Building
Washington, DC 20510

**Re: Hearing on the Reauthorization of the Elementary and Secondary
Education Act (S. 1180, the Educational Excellence for All Children
Act of 1999)**

Dear Chairman Campbell:

On behalf of NARF's clients in the area of Tribal Education Departments, the Rosebud Sioux Tribe of South Dakota; the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in Montana; the Northern Cheyenne Tribe in Montana; the Three Affiliated Tribes of the Fort Berthold Indian Reservation in North Dakota; and the Jicarilla Apache Tribe in New Mexico, we submit the following materials for the record regarding the Committee's Hearing on October 27, 1999 regarding Indian Education Programs and the Reauthorization of the Elementary and Secondary Education Act (S. 1180, the Educational Excellence for All Children Act of 1999):

1. *Federal and State Laws regarding Tribal Education Departments, 1984-1999.* This book details the importance to Congress of the role of tribal education departments in improving Indian education, as evidenced by eleven federal statutes and their legislative history;
2. *External Evaluation Final Report of the Rosebud Sioux Tribal Education Department* (April, 1999). This report substantiates that tribal education departments can have a positive impact on reducing drop out rates and increasing graduation rates of tribal secondary students in both tribal and public schools;
3. *Notification that the Rosebud Sioux Tribal Education Department has been selected as being among Sixteen Finalists of the Harvard University "Honoring*

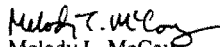
The Honorable Ben Nighthorse Campbell, Chairman
October 25, 1999
Page 2

Nations " Project for 1999. The Rosebud Sioux Tribal Education Department's Truancy Intervention Project has been recognized for its contributions to sustaining the Tribe's economy; and

4. *Statement of the Native American Rights Fund before the Senate Committee on Health, Education, Labor, and Pensions* (June, 1999). NARF has testified in support of retaining and funding the appropriations authorizations for tribal education departments enacted by Congress in Pub. L. No. 103-382 (1994) and Pub. L. No. 100-297 (1988).

Thank you for your attention to this critical matter. Please let me know if I can provide further information.

Sincerely yours,


Melody L. McCoy

MLM:rr
enclosure

cc: Case File
Chron

THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

"Tribalizing Indian Education"

**Federal and State Laws regarding Tribal Education Departments
1984-1999**



October, 1999

THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

"Tribalizing Indian Education"

**Federal and State Laws regarding Tribal Education Departments
1984-1999**

FUND

Prepared by

Melody L. McCoy
Staff Attorney & Project Director
NATIVE AMERICAN RIGHTS

1506 Broadway
Boulder, Colorado 80302
(303) 447-8760
FAX (303) 443-7776
<mmccoy@narf.org>

October, 1999



THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

**Federal and State Laws regarding Tribal Education Departments
1984-1999**

INTRODUCTION

These materials are a compilation of federal and state laws that have provisions regarding tribal education departments. Most of the federal laws were enacted between 1984 and 1994, and their legislative history is detailed in these materials. The materials are intended to be a general resource for tribal, state, and federal officials, schools, and other interested persons. For further information and reference about Indian education law and policy and the rights and roles of tribal governments in education, please see the first four sets of materials under this project dated October, 1993, October, 1994, October, 1997, and October, 1998. None of these materials is intended to be legal advice for any particular tribe. Tribes should consult their legal counsel for specific advice about the existence and scope of their sovereign authority in education.

The Native American Rights Fund's Indian Education Legal Support Project, "*Tribalizing Indian Education*," is supported by a grant from the W.K. Kellogg Foundation to build the capacity of Indian tribes to control education and improve student academic performance.

• 1999 Native American Rights Fund

NATIVE AMERICAN RIGHTS FUND
INDIAN EDUCATION LEGAL SUPPORT PROJECT
EXECUTIVE SUMMARY

The Native American Rights Fund

The Native American Rights Fund (NARF) is the national legal defense fund for American Indian and Alaska Native tribes. Founded in 1970, NARF concentrates on bringing cases and reforming laws that are of major importance to a great many Native people. NARF has been consistently at the forefront of issues and developments in Indian law in areas such as Indian treaty rights to land and water, Native religious freedom rights, and the rights of tribes as sovereign governments including tribal rights in education.

The NARF Indian Education Legal Support Project - Tribalizing Indian Education

NARF historically has represented Indian clients on a variety of education issues. Most recently, NARF has represented the Rosebud Sioux Tribe of South Dakota in establishing a precedent-setting tribal education code and implementing that code through a tribal education department. As a result of its success with the Rosebud Sioux Tribe, NARF started a new project funded by the Carnegie Corporation of New York and the W.K. Kellogg Foundation. The project advances Native American education by emphasizing the legal rights of tribes to control the formal education of tribal members in all types of schools -- federal, state, and tribal.

NARF seeks to "tribalize" formal education through developing tribal education laws and reforming state and national Indian education legislation. Tribal education laws are essential to effective tribal control of education, yet few tribes have such laws. Tribal laws are essential to defining each tribe's education rights and goals. Tribal laws are essential to delineating the forum and process for establishing tribal and non-tribal government-to-government relationships and working agreements on common education issues and goals.

The Need is Evident but Affirmative Steps Must Be Taken

Indian tribes are sovereign governments just as their state and federal counterparts. Many federal reports and some federal and state laws have focused on Indian education problems. Some reports and laws have pointed out the need to increase the role of tribal governments to address the problems. But instead of requiring active tribal government involvement, most federal and state education programs and processes circumvent tribal governments and maintain non-Indian federal and state government control over the intent, goals, approaches, funding, staffing, and curriculum for Indian education. And there are no effective programs to establish tribal education codes or operate tribal education departments.

The three sovereign governments in this country have a major stake in Indian education. Common sense dictates that tribal governments have the most at stake because it involves their children, their most precious resource, and their future for perpetuating tribes. Some progress has been made because of Indian education programs, Indian parent committees, Indian school boards, and tribally-controlled colleges. Some progress has been made through a measured amount of tribal control and input under laws that include the Indian Education Act of 1988, the Indian Self-Determination and Education Assistance Act of 1975, the Elementary and Secondary Education Act of 1965, and the Impact Aid Laws of 1950.

Conclusion

More direct tribal control of Indian education is needed, and more direct control is the next logical step for many tribes. Federal reports and recommendations call for partnerships between

tribes and state schools, tribal approval of state education plans, and tribal education codes, plans, and standards. Tribal control of education is a fact of life in a small number of tribes and more tribal communities want to assume this control. But tribes have been denied this opportunity and responsibility and have been "out of the loop" for decision-making and accountability. For Indian education to succeed, federal and state governments must allow tribes the opportunity to regain control and make decisions, be accountable, and help shape their children's future and their own future as tribes. NARF intends to ensure that tribes gain the legal control over education that they deserve as sovereign governments and that they must have for Indian education success.

NOTES

THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

Federal and State Laws regarding Tribal Education Departments
1984-1999

GOALS OF THE PROJECT - TRIBALIZING INDIAN EDUCATION

1. To promote sovereign tribal rights and responsibilities in education, including the government-to-government interactions of tribal governments with the federal and state governments;
2. To increase the number of tribal governments that assess their education situation, develop education goals, and exercise sovereign rights through developing and implementing tribal education laws, tribal education standards, and tribal education plans;
3. To increase the number of tribal governments that take more education responsibility, control, and accountability;
4. To assist the federal and state governments in increasing their government-to-government education work with tribal governments and in monitoring that increase within their federal and state agencies and federal and state funded education programs; and,
5. To assist tribes in reforming federal and state Indian education laws and policies and in passing new laws and adopting new policies which enable tribal decision-making, ensure access to resources, and enhance other improvements in Indian education.

NOTES

THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

Federal and State Laws regarding Tribal Education Departments
1984-1999

Tribal Education Departments in the 1980s and 1990s—An Overview

Since 1987, NARF has been helping Indian tribes to establish Tribal Education Departments (TEDs) and develop tribal education codes. NARF was first contacted about TEDs by the Rosebud Sioux Tribe (RST) in South Dakota. The Education Committee of the Tribal Council requested NARF's assistance in establishing its authority as a sovereign government over education on its Reservation, including the public schools that serve a majority of tribal students. The RST wanted to enact a tribal education code and also needed a TED to implement and enforce its code. At that time, the idea of direct tribal governmental regulation as a means to improve education was relatively new, and the RST had been unable to find a suitable model tribal law to meet its needs.

With NARF's assistance, the RST established its TED in 1990 and enacted its tribal education code in 1991. The RST's education code regulates all education entities on the Reservation, including the public schools. The code targets areas such as curriculum, education standards, and parental involvement. These are areas where the RST believes that tribal education law, policy, and programs must supplement existing state education law, policy, and programs for tribal students to progress and succeed in terms of educational opportunities and performance.

Upon the RST's suggestion, a national gathering of TEDs was first held in 1994. Since that time, NARF has helped sponsor National Tribal Education Department Forums along with the RST, other tribes with TEDs, and various national Indian organizations. The National TED Forums are now held twice a year, typically in conjunction with another major Indian conference. The National TED Forums are unique opportunities to share information and strategize on common issues. Through the Forums, NARF to date has identified over ninety tribes with TEDs. With over 550 federally recognized tribes, that amounts to about one in every six tribes having a TED.

The roles and responsibilities of TEDs vary widely. Most TEDs provide leadership and advocate for education generally within their tribes and with non-tribal governments. TED leadership and advocacy is often provided in coordination with local Indian and public school boards, educators, and parents. Many TEDs regularly prepare education reports and conduct forums or public hearings on tribal education needs and issues. Many help develop or establish the budgets for education programs that serve tribal students, and some TEDs are involved in evaluating these programs. Some TEDs operate, administer, or oversee programs such as higher education scholarships, native language programs, and truancy intervention programs.

Because tribal populations differ, the number of tribal students served by any one TED ranges from under fifty to over 100,000. TEDs may serve students of all education levels, from pre-school to post-secondary and adult education, or they may serve only one level or a few levels of students. TED staff numbers also vary, from a single Director to over one hundred employees. TEDs often coordinate their work

with other tribal agencies such as social services, juvenile programs, and health care offices.

As the next Section of these materials shows, to date eleven federal statutes specifically provide for TEDs. The two most important of these statutory provisions are those that authorize direct federal appropriations for TEDs. These appropriations authorizations were enacted in 1988 (Pub. L. No. 100-297, currently codified at 25 U.S.C. § 2024) and in 1994 (Pub. L. No. 103-382, currently codified at 20 U.S.C. § 7835). The 1988 law authorizes appropriations for TEDs through the Bureau of Indian Affairs (BIA) within the Department of the Interior. The 1994 law authorizes appropriations for TEDs through the Department of Education. No appropriations by Congress have ever been made under either of these provisions.

Most of the other federal statutory provisions acknowledge the contributions of TEDs along with those of state education departments and local education agencies in establishing education and accreditation standards, developing and disseminating education research and technology, coordinating and improving education programs, and interacting with non-tribal agencies and schools. Many of these statutory provisions were enacted as part of the Goals 2000: Education America Act and the Improving America's Schools Act of 1994. Despite the lack of congressional appropriations for TEDs, the recognition by Congress of the roles and responsibilities that TEDs can and do assume and perform is encouraging. As Representative Kildee (D-MI), one of the original congressional proponents of TEDs has stated:

[We recognize] the need to encourage and strengthen tribal divisions of education. This is particularly important due to recent congressional actions which have placed growing emphasis on tribal involvement in the education of Indian students. Many tribes have already taken the first steps to develop these divisions. However, more needs to be done in this area.

133 Cong. Rec. H3817-02 (1987).

As Section 5 of these materials shows, to date only one state law specifically mentions TEDs. In 1995 Wisconsin enacted a statutory American Indian Language and Culture Education Program. This program encourages school districts with Native American students to establish American Indian language and culture programs as part of the regular education curriculum. Where such programs are established, a parent advisory committee must also be established to advise the school board of the committee's views of the program. By statute, the school board must include on the committee representatives of existing TEDs, and must get recommendations from the TEDs for other committee member appointments.

The Carnegie Corporation of New York, long a leader in funding education improvement research and projects, recently funded an external evaluation of the RST TED. The evaluation report, issued in April, 1999 confirmed that TEDs can positively impact educational opportunities for tribal students. The evaluation found that since the RST established its TED, the drop out rates for tribal secondary students have decreased by thirty per cent and graduation rates have increased by fifty per cent. The evaluation credits the Truancy Intervention Project, developed and administered by the TED, with this progress in addressing a core problem in Indian education. The evaluation commended the RST TED's leadership and collaboration with non-tribal governments, schools, parents, and students in implementing the tribal education code and other education initiatives. And, the evaluation noted that the RST's efforts could likely be adopted by other tribes and expanded into areas of improving tribal student educational achievement and attainment levels.

Thus, while many TEDs are still evolving, their effectiveness and potential has now been demonstrated. For more tribes to build on the success of the RST TED, the evaluation recommended more funding for TEDs, including direct federal funding. The evaluation noted that to date the RST TED has operated largely on an annual budget from tribal revenues of about \$76,000. Phil Baird, former President of the National Indian Education Association, also agrees that:

Tribes need federal funding to help develop tribal departments of education which can engage in developmental work and place them in better positions to negotiate or enter into agreements with state and local governments as equal partners in our nation's school reform efforts.

Testimony of the National Indian Education Association before the Senate Committee on Indian Affairs on the Reauthorization of Elementary and Secondary Education Programs, 1994 WL 232500 (F.D.C.H. May 4, 1994). These materials have been prepared primarily to capture the TEDs' history in federal and state legislation, and to help them prepare for the future.

THE NATIVE AMERICAN RIGHTS FUND

INDIAN EDUCATION LEGAL SUPPORT PROJECT

**Federal and State Laws regarding Tribal Education Departments
1984-1999**

Federal Law Provisions regarding Tribal Education Departments

A. The Indian Self-Determination and Education Assistance Act

25 U.S.C. § 2010(c) provides that:

... The Secretary [of the Interior] may approve applications for funding tribal divisions of education and the development of tribal codes of education from funds appropriated pursuant to ... this title.

Analysis

This provision allows the BIA to fund tribal education departments and codes from general Indian Self-Determination and Education Assistance Act (also known as "638") funds.

History

In 1975, Section 104 of the original Indian Self-Determination and Indian Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975), authorized the BIA to contract with tribes for technical assistance and training funds that would improve a tribe's ability to enter into '638 contracts for the planning, operation, training, and evaluation of federal programs serving the tribe.

In 1978, Section 1129(c) of the Education Amendments, Pub. L. No. 95-561, 92 Stat. 2143 (1978), conditioned the use of the technical assistance and training funds upon an agreed upon plan between a tribe and the BIA. The plan had to provide that control of education programs would be transferred to the tribe within a specified period of time.

The House of Representatives Committee on Education and Labor reported that this remedial condition was necessary because BIA policy "has led to distribution of these funds on a political basis, for purposes other than technical assistance and training." H.R. Rep. No. 95-1137 (1978). In the view of the Committee, the BIA's policy violated the law and had resulted in a shortage of funds for tribes. *Id.*; see also H.R. Conf. Rep. No. 95-1753 (1978).

In 1984, Section 506(b) of the Education Amendments, Pub. L. No. 98-511, 99 Stat. 2366 (1984), clarified the remedial condition by adding a provision directing the BIA to institute a program for funding tribal education departments and the development of tribal education codes.

The House of Representatives Committee on Education and Labor reported that this clarification was needed to encourage the growth of tribal education departments and the development of tribal education codes. H.R. Rep. No. 98-748 (1984). "The Committee supports these activities and will closely oversee the implementation of this provision."
Id.

In 1985, Section 6(b) of the Indian Education Technical Amendments, Pub. L. No. 99-89, 99 Stat. 379 (1985), amended the clarification to replace the language "shall institute a program" with "may approve applications."

The House of Representatives Committee on Education and Labor reported that this amendment was needed to clarify that the 1984 clarification did not make a new program, but made tribal education departments and codes an eligible activity under '638. H.R. Rep. No. 99-231 (1985).

Other Comments

Interestingly, in 1984, the House of Representatives Committee on Education and Labor reported that it had declined to include "tribal standards" among the options for education standards for BIA and contract schools. H.R. Rep. No. 98-748 (1984). The Committee stated that it

regretted this because it supports such standards. However, until there are more tribal divisions of education and codes of standards available, such an option would neither satisfy the skeptics nor adequately reinforce the schools and their supporters.

Id.

On October 2, 1989, the committee of conference submitted its report, H.R. Conf. Rep. No. 101-264 (1989), on H.R. 2788, 101st Cong. (1989), the Department of the Interior and Related Agencies Appropriations Act of 1990. 135 Cong. Rec. H6385-01 (1989). The report stated that

[w]ith respect to contract support funds provided to the Bureau of Indian Affairs, the managers direct the Bureau and the Inspector General to take steps to notify tribes that indirect cost rates may be negotiated to include the administrative costs of operation of tribal

departments of education. Because of the specific situation of the Mississippi Band of Choctaw Indians, the managers have included \$100,000 for a one-year pilot projects (sic) for establishment of a reservation-wide education system. The Committees will review the results of this project before providing any additional funds for tribal departments of education....

Id.

B. The Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. No. 100-297, 102 Stat. 130 (1988)

1. 25 U.S.C. § 2024 provides that:

(a) In general

Subject to the availability of appropriations, the Secretary shall provide grants and technical assistance to tribes for the development and operation of tribal departments of education for the purpose of planning and coordinating all educational programs of the tribe.

(b) Grants provided under this section shall—

- (1) be based on applications from the governing body of the tribe,
- (2) reflect factors such as geographic and population diversity,
- (3) facilitate tribal control in all matters relating to the education of Indian children on Indian reservations and on former Indian reservations in Oklahoma,
- (4) provide for the development of coordinated educational programs on Indian reservations (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) by encouraging tribal administrative support of all Bureau funded educational programs as well as encouraging tribal cooperation and coordination with all educational programs receiving financial support from State agencies, other Federal agencies, or private entities,
- (5) provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs, and
- (6) otherwise comply with regulations for grants under section 450h(a) of this title that are in effect on the date application for such grants are made.

(c) Priorities

- (1) In approving and funding applications for grants under this section, the Secretary shall give priority to any application that—

(A) includes assurances from the majority of Bureau funded schools located within the boundaries of the reservation of the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools, including the submission to each applicable agency of a unified application for funding for all of such schools which provides that—

- (i) no administrative costs other than those attributable to the individual programs of such schools will be associated with the unified application, and
- (ii) the distribution of all funds received under the unified application will be equal to the amount of funds provided by the applicable agency to which each of such schools is entitled under law,

(B) includes assurances from the tribal governing body that the tribal department of education funded under this section will administer all contracts or grants (except those covered by the other provisions of this chapter and the Tribally Controlled Community College Assistance Act of 1978 [25 U.S.C.A. § 1801 et seq.]) for education programs administered by the tribe and will coordinate all of the programs to the greatest extent possible,

(C) includes assurances for the monitoring and auditing by or through the tribal department of education of all education programs for which funds are provided by contract or grant to ensure that the programs meet the requirements of law, and

(D) provides a plan and schedule for--

- (i) the assumption over the term of the grant by the tribal department of education of all assets and functions of the Bureau agency office associated with the tribe, insofar as those responsibilities relate to education, and
- (ii) the termination by the Bureau of such operations and office at the time of such assumption, except that when mutually agreeable between the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

(2) Subject to the availability of appropriated funds, grants provided under this section shall be provided for a period of 3 years and the grant may, if performance by the grantee is satisfactory to the Secretary, be renewed for additional 3-year terms.

(d) Terms, conditions, or requirements

The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

(e) Authorization of appropriations

For the purpose of carrying out the provisions of this section, there are authorized to be appropriated \$2,000,000 for fiscal year 1995 and such sums as may be necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

Analysis

This section authorizes the BIA an appropriation of \$2 million to fund tribal education departments and codes through the Department of the Interior. The funds are to be used to plan and coordinate all education programs within a tribe's territory. Funding priority will be given to tribes that: 1) have BIA operated and funded school support; 2) will administer federal education program contracts and grants, except tribal colleges; 3) have contract and grant audit assurances; and 4) have a plan and schedule for assuming BIA education assets and functions.

History

The House of Representatives has reported that this authorization for appropriations for funding tribal education departments through the Department of the Interior was the result of an amendment by the Senate to the House of Representatives bill that became the Elementary and Secondary School Improvement Amendments of 1988. H.R. Conf. Rep. No. 100-567 (1988). The House of Representatives agreed to the authorization if the funding priority factors were added. *Id.* A more specific history of this authorization provision is as follows.

On January 6, 1987, Representative Hawkins (D-CA), introduced in the House of Representatives H.R. 5, 100th Cong. (1987), a bill to improve elementary and secondary education. 133 Cong. Rec. H101-01 (1987). H.R. 5 was referred to the House of Representatives Committee on Education and Labor. *Id.*

On April 22, 1987, the House Committee on Education and Labor ordered H.R. 5, now entitled the School Improvement Act of 1987, to be reported. 133 Cong. Rec. D00000-03 (1987).

On May 21, 1987, Representative Kildee (D-MI), proposed, among other things, adding an appropriations authorization provision that would fund, through the Department of Education, tribal education departments. 133 Cong. Rec. H3817-02 (1987).

In support of his proposed amendment, Congressman Kildee stated that it:

[r]ecognizes the need to encourage and strengthen tribal divisions of education. This is particularly important due to recent congressional actions which have placed growing emphasis on tribal involvement in the education of Indian students. Many tribes have already taken the first steps to develop these divisions. However, more needs to be done in this area.

Id. That same day, the House of Representatives passed H.R. 5, as amended. 133 Cong. Rec. D00000-03 (1987).

On December 1, 1987, Senator Deconcini (D-NM), proposed the Indian Education Amendments of 1987 to S. 373, 100th Cong. (1987), a bill entitled the Robert T. Stafford Elementary and Secondary Education Improvement Act of 1987. 133 Cong. Rec. S16775-02 (1987); 133 Cong. Rec. S16880-02 (1987). The Amendments contained a section authorizing appropriations to fund tribal education departments through the Department of the Interior. 133 Cong. Rec. S16880-02 (1987).

In support of the Indian Education Amendments, Senator Daschle (D-SD), stated:

In addition to a number of other important provisions, this title also contains a provision for special projects that could enable South Dakota's Pine Ridge Reservation to operate its own tribal department of education and assume fully (sic) responsibility for the education of its children in a more coordinated fashion.

133 Cong. Rec. S16802-02 (1987).

The tribal education department funding authorization provision became Section 11118 of S. 373. 133 Cong. Rec. S17008-01 (1987). That same day, H.R. 5 was passed by the Senate as amended by S. 373, as amended. 133 Cong. Rec. S17008-01 (1987).

On December 8, 1987, the House of Representatives received a message from the Senate announcing that the Senate insisted upon its amendment (S. 373) to H.R. 5, and requesting a conference with the House on the disagreeing versions of the two bills. 133 Cong. Rec. H11019-03 (1987). On February 9, 1988, the House disagreed to the Senate amendment to H.R. 5 (S. 373), but agreed to a conference on the two bills. 134 Cong. Rec. H275-03 (1988).

On April 13, 1988, the conferees recommended that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment. 134 Cong. Rec. H1488-02 (1988).

The conferees recommended entitling the bill the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. *Id.*

Regarding tribal education department funding, the conferees recommended keeping the Senate version which authorized appropriations through the Department of the Interior. *Id.*

On April 19, 1988, the House of Representatives, by H.R. Res. 427, 100th Cong. (1988), added the priority factors for tribal education department funding. 134 Cong. Rec. H1707-02 (1988). In support of the conferee recommendations and H.R. Res. 427, Congressman Richardson (D-NM), stated that he had:

[w]orked to insure that all Indian tribes would be eligible to apply for grants to establish tribal departments of education to coordinate both Federal and tribal education programs, and to develop education standards and policies.

Id.

The House of Representatives also made clear that, although tribal education departments would be encouraged to administer all federal Indian education program contracts and grants, this provision was not intended to be a requirement of a single education contract per tribe. 134 Cong. Rec. S4336-01 (1988). *Id.* Also, tribal college funding was to be exempt from tribal education department administration.

On April 20, 1988, Senator Daschle (D-SD), speaking in favor of the conference agreement on the bills, stated that:

[t]he [compromise] bill would permit the establishment of a tribal department of education to oversee schools run by the BIA and by tribes. This provision will enable the Oglala Sioux at Pine Ridge to actively plan and better coordinate all of its educational programs. It would further the concept of self-determination by insuring the maximum participation of the Oglala in determining their future educationally.

134 Cong. Rec. S4336-01 (1988).

On April 28, 1988, with passage by the House of Representatives, H.R. 5, as amended by S. 373 and H.R. Res. 427, became Pub. L. No. 100-297, 102 Stat. 130 (1988). The provision authorizing tribal education department funding is currently codified at 25 U.S.C. § 2024. To date no appropriations have been made under this authorization provision.

Other comments

Interestingly, Representative Kildee's (D-MI) original proposed amendments to H.R. 5 would have set aside ten percent (10%) of annual funding under the "Demonstration Projects" of The Indian Education Act of 1972 administered through the Department of Education, for tribal education departments. 133 Cong. Rec. H3817-02 (1987).

Such a provision was not part of S. 373 or of H.R. Res. 427. 134 Cong. Rec. H1488-02 (1988); 134 Cong. Rec. H1707-02 (1988). Ultimately, the House receded on this provision after conference. 134 Cong. Rec. S4336-01 (1988).

On October 2, 1990, the House of Representatives Committee on Appropriations submitted its report, H.R. Rep. No. 101-789 (1990), on H.R. 5769, 101st Cong. (1990), the Department of the Interior and Related Agencies Appropriations Bill, 1991. 136 Cong. Rec. H8604-05 (1990). Regarding tribal education departments, the Committee on Appropriations recommended \$100,000 "to restore funds for the Choctaw Tribal Department of Education." H.R. Rep. No. 101-789 (1990). The Committee also reported that "[t]he Bureau should work with other tribes that have requested funding to establish tribal departments of education, to identify the funding needed to do so, and the source of such funds." *Id.*

2. 25 U.S.C. § 2506(c)(1)(A)(i) to (ii)(III) provides that:

The Secretary [of the Interior] shall not revoke a determination that a [tribally controlled grant] school is eligible for assistance under this chapter if — the Indian tribe or tribal organization submits the reports required under subsection (b) of this section with respect to the school, and at least one of the following subclauses applies with respect to the school; The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.

Analysis

This section prohibits the BIA from revoking a tribal grant school's eligibility for grant school status and assistance provided that the school has made proper annual reporting and has been accredited by a state or federally recognized tribal education department.

History

On January 6, 1987, Representative Hawkins (D-CA), introduced H.R. 5, 100th Cong. (1987), a bill to improve elementary and secondary education. H.R. 5 was referred to the House of Representatives Committee on Education and Labor. 133 Cong. Rec. H101-01 (1987).

Among other things, H.R. 5 had a part entitled the Indian Self-Determination Grants Act of 1987. This part was directed at improving and enhancing tribal contracting of BIA funded schools. It allowed eligible tribally controlled school boards to operate the schools under annual grants, rather than under quarterly contract payments. Tribes could also invest the grant funds under certain restrictions, and use the interest gained for further educational costs in the schools. 133 Cong. Rec. H3817-02 (1987).

One of the conditions for eligibility for grant status and assistance was that the school be accredited. Section 8207(c)(1)(B) of H.R. 5 provided for this condition to be met if the school was "accredit[ed] by a Tribal Division of Education." *Id.*

On April 22, 1987, the House Committee on Education and Labor reported on H.R. 5, now entitled the School Improvement Act of 1987. 133 Cong. Rec. D00000-03 (1987).

On May 21, 1987, the House of Representatives passed H.R. 5, as amended. 133 Cong. Rec. D00000-03 (1987).

On August 7, 1987, Senator Deconcini (D-NM), introduced S. 1645, 100th Cong. (1987), a bill entitled the Indian Education Act Amendments of 1987. 133 Cong. Rec. S11651-01 (1987). Similarly to H.R. 5, Title II of S. 1645 dealt with improving and enhancing tribal contracting of BIA funded schools. It allowed eligible tribally controlled school boards to operate the schools under annual grants, rather than under quarterly contract payments. Tribes could also invest the grant funds, with certain restrictions, and use the interest gained for further educational costs in the schools. 133 Cong. Rec. S11651-01 (1987).

One of the conditions for eligibility for grant status and assistance was that the school be accredited. Section 207(c)(1)(B) of S. 1645 provided that this condition would be met if the school was "accredit[ed] by a Tribal Division of Education." 133 Cong. Rec. S11651-01 (1987).

On December 1, 1987, Senator Deconcini (D-NM), proposed the Indian Education Amendments of 1987, formerly S. 1645, as an amendment to S. 373 100th Cong. (1987), a bill amending H.R. 5 and entitled the Robert T. Stafford Elementary and Secondary Education Improvement Act of 1987. 133 Cong. Rec. S16880-02 (1987).

Part B of the Amendments authorized grant school status and assistance. Section 11206(d)(2)(A)(ii)(III) provided that once grant school eligibility had been determined, the BIA could not revoke that determination if the school had been "accredited by a tribal

division of education if such accreditation is accepted by a generally recognized regional or State accreditation agency." 133 Cong. Rec. S16880-02 (1987). That same day, the Senate passed H.R. 5 as amended by S. 373, as amended. 133 Cong. Rec. S17008-01 (1987).

On December 8, 1987, the House of Representatives received a message from the Senate announcing that the Senate insisted upon its amendment (S. 373) to H.R. 5, and requesting a conference with the House on the disagreeing versions of the two bills. 133 Cong. Rec. H11019-03 (1987). On February 9, 1988, the House disagreed to the Senate amendment to H.R. 5 (S. 373), but agreed to a conference on the two bills. 134 Cong. Rec. H275-03 (1988).

On April 13, 1988, the conferees recommended that the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment. 134 Cong. Rec. H1488-02 (1988).

The conferees recommended entitling the bill the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. 134 Cong. Rec. H1488-02 (1988). Regarding tribal education department accreditation of grant schools, the conferees recommended keeping the Senate version which allowed such accreditation to prevent eligibility determination revocation only if the tribal education department accreditation was accepted by a generally recognized regional or State accreditation agency. H.R. Conf. Rep. No. 100-567 (1988); *accord* 134 Cong. Rec. S4336-01 (1988).

On April 19, 1988, the House of Representatives, by H.R. Res. 427, 100th Cong. (1988), added to H.R. 5 the provision that tribal education department accreditation of a grant school prohibited the BIA from revoking the school's eligibility determination, and added the condition that the tribal education department accreditation must be "accepted by a generally recognized regional or State accreditation agency." 134 Cong. Rec. H1707-02 (1988).

On April 28, 1988, with passage by the House of Representatives, H.R. 5, as amended by S. 373 and H.R. Res. 427, became Pub. L. No. 100-297, 102 Stat. 130 (1988). The provisions on tribal education department accreditation of tribal grant schools are currently codified at 25 U.S.C. § 2506(c)(1)(A)(ii)(III). To the best of NARF's knowledge, to date no grant school has relied on this provision to prohibit the BIA from revoking its grant school status or assistance eligibility determination.

3. 20 U.S.C. § 7404 provides that:

(a) Eligible entities

For the purpose of carrying out programs under this part for individuals served by elementary, secondary, and postsecondary schools operated predominately for Native American or Alaska Native children and youth, an Indian tribe, a tribally sanctioned educational authority, a Native Hawaiian or Native American Pacific Islander native language education organization, or an elementary or secondary school that is operated or funded by the Bureau of Indian Affairs shall be considered to be a local educational agency as such term is used in this part, subject to the following qualifications:

(1) Indian tribe

The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) Tribally sanctioned educational authority

The term "tribally sanctioned educational authority" means—

(A) any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe; and

(B) any nonprofit institution or organization that is—

(i) chartered by the governing body of an Indian tribe to operate any such school or otherwise to oversee the delivery of educational services to members of that tribe; and

(ii) approved by the Secretary for the purpose of this section.

(b) Eligible entity application

Notwithstanding any other provision of this part, each eligible entity described in subsection (a) of this section shall submit any application for assistance under this part directly to the Secretary along with timely comments on the need for the proposed program.

Analysis

This section treats tribal education departments as local education agencies for purposes of receiving grants for and administering bilingual education programs in schools with predominately Indian students.

History

On January 6, 1987, Representative Hawkins (D-CA) introduced H.R. 5, 100th Cong. (1987), a bill to improve elementary and secondary education. H.R. 5 was referred to the House of Representatives Committee on Education and Labor. 133 Cong. Rec. E80-02 (1987).

On January 21, 1987, Senator Pell (D-RJ) introduced S. 373, 100th Cong. (1987), a bill to reauthorize elementary and secondary education programs in the United States, entitled the Elementary and Secondary Education Amendments of 1987. 133 Cong. Rec. S1053-03 (1987); 133 Cong. Rec. S1054-02 (1987). S. 373 was referred to the Senate Committee on Labor and Human Resources. 133 Cong. Rec. S1053-03 (1987).

On April 22, 1987, the House Committee on Education and Labor ordered H.R. 5, now entitled the School Improvement Act of 1987, to be reported. 133 Cong. Rec. D00000-03 (1987).

On May 21, 1987, the House of Representatives passed H.R. 5, as amended. 133 Cong. Rec. D00000-03 (1987).

Title VII of H.R. 5 dealt with Bilingual Education Programs. 133 Cong. Rec. H3817-02 (1987). Section 7022 of Title VII provided that, in elementary, secondary, and postsecondary schools operated predominately for American Indian or Alaska Native students, tribally sanctioned educational authorities, including tribal education departments, would be considered local educational authorities eligible to receive and administer bilingual education grants. *Id.*

On October 14, 1987, the Senate Committee on Labor and Human Resources ordered S. 373 as amended favorably reported. 133 Cong. Rec. D1329-02 (1987).

On November 19, 1987, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 100-222 (1987), on S. 373. 133 Cong. Rec. S16544-01 (1987); 133 Cong. Rec. D1529-02 (1987).

Title VII of S. 373 dealt with Bilingual Education Programs. S. Rep. No. 100-222 (1987). Section 7022 of Title VII provided that, in elementary and secondary schools operated predominately for American Indian or Alaska Native students, tribally sanctioned educational authorities, including tribal education departments, would be

considered local educational authorities eligible to receive and administer bilingual education grants. *Id.* This section was virtually identical to the counterpart provision in H.R. 5.

On December 1, 1987, the Senate passed H.R. 5 as amended by S. 373 as amended. 133 Cong. Rec. S17008-01 (1987); 133 Cong. Rec. D1550-01 (1987).

On December 8, 1987, the House of Representatives received a message from the Senate announcing that the Senate insisted upon its amendment (S. 373 as amended) to H.R. 5, and requesting a conference with the House on the disagreeing versions of the two bills. 133 Cong. Rec. H11019-03 (1987). On February 9, 1988, the House disagreed to the Senate amendment to H.R. 5 (S. 373 as amended), but agreed to a conference on the two bills. 134 Cong. Rec. H275-03 (1988).

On April 13, 1988, the conferees filed their report, H.R. Conf. Rep. No. 100-567 (1988), on H.R. 5, recommended by the conferees to be entitled the Augustus F. Hawkins - Robert T. Stafford Elementary and Secondary School Improvement Amendments. 134 Cong. Rec. H1488-02 (1988).

The report recommended generally that the House of Representatives recede from its disagreement to the amendment of the Senate and agree to the same with an amendment. H.R. Conf. Rep. No. 100-567 (1988). Regarding bilingual education programs and tribal education departments, the conferees recommended keeping in the virtually identical provisions of H.R. 5 and S. 373. *Id.*; accord 134 Cong. Rec. S4336-01 (1988).

On April 28, 1988, with passage by the House of Representatives, H.R. 5, as amended by S. 373 and H.R. Res. 427, became Pub. L. No. 100-297, 102 Stat. 130 (1988). The provision on bilingual education and tribal education departments is currently codified at 20 U.S.C. § 7404.

C. Goals 2000: Educate America Act of 1994, Pub. L. No. 103-227, 108 Stat. 125 (1994).

1. 20 U.S.C. § 5894 provides that:

(a) Technical assistance and integration of standards

From funds reserved in each fiscal year under section 5884(a)(2)(A) of this title, the Secretary may, directly or through grants or contracts—

- (1) provide technical assistance to States, local educational agencies, and tribal agencies developing or implementing school improvement plans, in a manner that ensures that such assistance is broadly available;
- (2) gather data on, conduct research on, and evaluate systemic education improvement and how such improvement affects student learning, including the

programs assisted under this subchapter;

(3) disseminate research findings and other information on outstanding examples of systemic education improvement in States and local communities through existing dissemination systems within the Department of Education, including through publications, electronic and telecommunications mediums, conferences, and other means;

(4) provide grants to tribal divisions of education for coordination efforts between school reform plans developed for schools funded by the Bureau and public schools described in section 5886(g)(2) of this title, including tribal activities in support of such plans;

(5) support national demonstration projects that unite local and State educational agencies, institutions of higher education, government, business, and labor in collaborative arrangements in order to make educational improvements systemwide; and

(6) support model projects to integrate multiple content standards, if—

(A) such standards are approved by the National Goals Panel for different subject areas, in order to provide balanced and coherent instructional programs for all students; and

(B) such projects are appropriate for a wide range of diverse circumstances, localities (including both urban and rural communities), and populations.

(b) Reservation of funds

(1) In general

The Secretary shall use at least 50 percent of the funds reserved each year under section 5884(a)(2)(A) of this title to make grants, in accordance with the provisions of section 5889(a) of this title that the Secretary determines appropriate, and provide technical and other assistance to urban and rural local educational agencies with large numbers or concentrations of students who are economically disadvantaged or who have limited English proficiency, to assist such agencies in developing and implementing local school improvement plans, except that any school that received funds under section 5889(a) of this title shall not receive assistance pursuant to this paragraph other than technical assistance.

(2) Survey

The Secretary shall use not less than \$1,000,000 of the funds reserved for fiscal year 1994 under section 5884(a)(2)(A) of this title to replicate coordinated services programs that have been found to be successful in helping students and families and improving student outcomes, and shall disseminate information about such programs to schools that plan to develop coordinated services programs.

(c) Administration

Any activities assisted under this section that involve research shall be administered through the Office of Educational Research and Improvement.

Analysis

This provision authorizes the Department of Education to provide grants to tribal education departments to coordinate Goals 2000 school reform plans between BIA and public schools.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as "Goals 2000," is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 promote systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement. These changes include the development and adoption of a voluntary national system of skill standards and certifications. States can apply for federal grants if they develop and implement plans for restructuring and improving education in accordance with these standards and certifications.

On April 22, 1993, Representative Kildee (D-MI), introduced H.R. 1804, 103rd Cong. (1993), a bill to improve learning and teaching by providing a national framework for educational reform; to promote the research, consensus building, and systemic changes needed to ensure equitable educational opportunities and high levels of educational achievement for all American students; to provide a framework for reauthorization of all Federal education programs; to promote the development and adoption of a voluntary national system of skill standards and certifications; and other purposes. 139 Cong. Rec. H2022-02 (1993). H.R. 1804 was referred to the House of Representatives Committee on Education and Labor. *Id.*

Section 313(a) of H.R. 1804 authorized the Secretary of Education, through the Office of Educational Research and Improvement, to provide grants to tribal education departments to coordinate efforts between BIA funded schools and public schools that developed school reform plans under Goals 2000. H.R. Rep. No. 103-168 (1993); 139 Cong. Rec. H7740-03, H7764 (1993).

On May 6, 1993, the House of Representatives Subcommittee on Elementary, Secondary, and Vocational Education approved H.R. 1804, now entitled Goals 2000: Education America Act, for action by the House Committee on Education and Labor. 139 Cong. Rec. D473-01 (1993).

On June 23, 1993, following continued Subcommittee hearings, the House Committee on Education and Labor ordered H.R. 1804 to be reported as amended. 139 Cong. Rec. D706-01 (1993). On July 1, 1993, the House Committee on Education and Labor filed a report, H. R. Rep. No. 103-168 (1993), on H.R. 1804 as amended. In its report, the Committee stated that:

from 6 percent of the amount appropriated to carry out Title III, the Secretary is authorized, directly or through grants and contracts, to provide technical assistance, gather data and conduct research on systemic reform, disseminate information, and promote coordination of local BIA and public school reform plans through grants to tribal divisions of education.

H.R. Rep. No. 103-168 (1993).

Also on June 23, 1993, Senator Kennedy (D-MA), introduced from the Senate Committee on Labor and Human Resources, S. 1150, 103rd Cong. (1993), the counterpart to H.R. 1804, in the Senate. 139 Cong. Rec. S7756-01 (1993); 139 Cong. Rec. S7757-02 (1993); 139 Cong. Rec. D703-02 (1993).

On July 13, 1993, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-85 (1993), on S. 1150. 139 Cong. Rec. S8617-03 (1993). On August 23, 1993, the Senate Committee on Labor and Human Resources presented a second version of S. 1150.

On October 12, 1993, the House of Representatives Committee on Rules submitted a report, H.R. Rep. No. 103-288 (1993), on H.R. Res. 274, 103rd Cong. (1993), providing for consideration of H.R. 1804. 139 Cong. Rec. H7703-17 (1993); 139 Cong. Rec. H7706-05 (1993); 139 Cong. Rec. D1114-02 (1993).

On October 13, 1993, the House of Representatives adopted H.R. Res. 274, and passed H.R. 1804 as amended. 139 Cong. Rec. D1120-01 (1993).

On October 18, 1993, the House of Representatives sent a message to the Senate that it had passed H.R. 1804, and requested the concurrence of the Senate therein. 139 Cong. Rec. S13832-04 (1993).

On February 8, 1994, the Senate passed H.R. 1804, as amended by S. 1150 as amended. 140 Cong. Rec. S1128-02 (1994); 140 Cong. Rec. D92-02 (1994); 140 Cong. Rec. S1422-02 (1994).

The Senate version of H.R. 1804, as amended by S. 1150 as amended, did not contain the provision for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000. 140 Cong. Rec. S1753-02 (1994).

On February 9, 1994, the Senate sent a message to the House of Representatives that it had passed H.R. 1804, as amended by S. 1150 as amended, and requested the concurrence of the House therein. 140 Cong. Rec. H366-01 (1994).

On February 23, 1994, the House of Representatives agreed, with an amendment, to the Senate amendment to H.R. 1804. 140 Cong. Rec. H582-04 (1994). Section 163 of the House version of 1804 did contain the provision for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000. 140 Cong. Rec. H582-04 (1994); 140 Cong. Rec. S2258-01 (1994).

The House of Representatives insisted on its amendment to the Senate amendment to H.R. 1804, passed a motion to go to conference on H.R. 1804, and asked the Senate for a conference on the disagreeing versions of the bills. 140 Cong. Rec. S1859-03 (1994); 140 Cong. Rec. D141-01 (1994).

On March 2, 1994, the Senate disagreed to the amendment of the House of Representatives to the amendment of the Senate to H.R. 1804, but agreed to the request of the House for a conference thereon. 140 Cong. Rec. D179-01 (1994). On March 3, 1994, the Senate sent this message to the House. 140 Cong. Rec. H998-02 (1994).

On March 17, 1994, the conferees agreed to file a conference report on the differences between the Senate and House of Representatives passed versions of H.R. 1804. 140 Cong. Rec. D275-01.

On March 21, 1994, the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec. H1625-03 (1994). The report recommended keeping the provision, Section 314, for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000. *Id.*

On March 23, 1994, the House of Representatives, by H.R. Res. 393, 103rd Cong. (1994), considered the conference report accompanying H.R. 1804. 140 Cong. Rec. H1921-01 (1994). After consideration, the House agreed to the conference report on H.R. 1804. 140 Cong. Rec. D316-01 (1994). The House sent a message to the Senate that it had passed H.R. 1804, and that it requested the concurrence of the Senate therein. 140 Cong. Rec. S3548-01 (1994).

On March 25, 1994, the Senate agreed to the conference report on H.R. 1804. 140 Cong. Rec. D336-02 (1994).

On March 28, 1994, the House of Representatives Committee on House Administration presented H.R. 1804 to the President for his approval. 140 Cong. Rec. H2215-03 (1994).

On March 31, 1994, President Clinton signed Pub. L. No. 103-227, 108 Stat. 125 (1994), entitled Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provision for grants to tribal education departments to coordinate efforts between BIA funded schools and public schools regarding school reform plans under Goals 2000 is currently codified at 20 U.S.C. § 5894(a)(4). To date no appropriations have been made under this provision.

Other Comments

On February 14, 1995, Thomas W. Payzant, Assistant Secretary for Elementary and Secondary Education testified before the Senate Committee on Indian Affairs regarding the FY 96 Budget Request for Indian Programs. Assistant Secretary Payzant stated that under Goals 2000: Educate America Act, the Department of Education would "shortly be holding a competition for grants to tribal divisions of education to help them coordinate efforts between school reform plans developed for Bureau-funded schools and plans developed for public schools." Testimony of Thomas W. Payzant, Assistant Secretary for Elementary and Secondary Education, before the Senate Committee on Indian Affairs regarding FY 96 Budget Requests for Department of Education Programs that serve Indians, 1995 WL 59189 (F.D.C.H. Feb. 14, 1995).

2. 20 U.S.C. § 6031(e) provides that:

(e) National Institute on the Education of At-Risk Students

(1) Findings

The Congress finds as follows:

(A) The rate of decline in our urban schools is escalating at a rapid pace. Student performance in most inner city schools grows worse each year. At least half of all students entering ninth grade fail to graduate 4 years later and many more students from high-poverty backgrounds leave school with skills that are inadequate for today's workplace. Student performance in many inner city neighborhoods grows worse each year. At least half of all students entering ninth grade fail to graduate in 4 years. In 1992, the average National Assessment of Educational Progress reading score of Caucasian 17 year-olds was approximately 25 points higher than that of African American 17 year-olds and 20 points higher than that of Hispanic 17 year-olds.

(B) Rural schools enroll a disproportionately large share of the poor and

at-risk students of the United States and yet often lack the means to address effectively the needs of these children. Intensive efforts should be made to overcome the problems of geographic isolation, declining population, inadequate financial resources and other impediments to the educational success of children residing in rural areas.

(C) By the year 2000, an estimated 3,400,000 school age children with limited-English proficiency will be entering the school system. The Federal Government should develop effective policies and programs to address the educational needs of this growing population of children who are at increased risk of educational failure.

(D) An educational emergency exists in those urban and rural areas where there are large concentrations of children who live in poverty. The numbers of disadvantaged children will substantially increase by the year 2020, when the number of impoverished children alone will be 16,500,000, a 33 percent increase over the 12,400,000 children in poverty in 1987.

(E) American Indian and Alaska Native students have high dropout, illiteracy and poverty rates, and experience cultural, linguistic, social and geographic isolation. The estimated 400,000 Indian and Alaska Native student population from over 500 Indian and Alaska Native tribes, is small and scattered throughout remote reservations and villages in 32 States, and in off-reservation rural and urban communities where Indians constitute but a small percentage of public school student bodies. To meaningfully address the special educational needs of this historically under-served population, the existing research and development system should be opened to Indian and Alaska Native people to identify needs and design ways to address such needs.

(F) Minority scholars as well as institutions and groups that have been historically committed to the improvement of the education of at-risk students need to be more fully mobilized in the effort to develop a new generation of programs, models, practices, and schools capable of responding to the urgent needs of students who are educationally at-risk.

(2) Purpose

It shall be the purpose of the Institute on the Education of At-Risk Students to carry out a coordinated and comprehensive program of research and development to provide nonpartisan, research-based leadership to the United States as it seeks to improve educational opportunities for at-risk students. Such program shall—

(A) undertake research necessary to provide a sound basis from which to identify, develop, evaluate, and assist others to replicate and adapt interventions, programs, and models which promote greater achievement and educational success by at-risk students, such as—

(i) methods of instruction and educational practices (including

community services) which improve the achievement and retention of at-risk students;

(ii) the quality of educational opportunities afforded at-risk students, particularly the quality of educational opportunities afforded such students in highly concentrated urban areas and sparsely populated rural areas;

(iii) methods for overcoming the barriers to learning that may impede student achievement;

(iv) innovative teacher training and professional development methods to help at-risk students meet challenging standards;

(v) methods to improve the quality of the education of American Indian and Alaska Native students not only in schools funded by the Bureau, but also in public elementary and secondary schools located on or near Indian reservations, including—

(I) research on mechanisms to facilitate the establishment of tribal departments of education that assume responsibility for all education programs of State educational agencies operating on an Indian reservation and all education programs funded by the Bureau on an Indian reservation;

(II) research on the development of culturally appropriate curriculum for American Indian and Alaska Native students, including American Indian and Alaska Native culture, language, geography, history and social studies, and graduation requirements related to such curriculum;

(III) research on methods for recruiting, training and retraining qualified teachers from American Indian and Alaska Native communities, including research to promote flexibility in the criteria for certification of such teachers;

(IV) research on techniques for improving the educational achievement of American Indian and Alaska Native students, including methodologies to reduce dropout rates and increase graduation by such students; and

(V) research concerning the performance by American Indian and Alaska Native students of limited-English proficiency on standardized achievement tests, and related factors;

(vi) means by which parents and community resources and institutions (including cultural institutions) can be utilized to support and improve the achievement of at-risk students;

(vii) the training of teachers and other educational professionals and paraprofessionals to work more effectively with at-risk students;

(viii) the most effective uses of technology in the education of at-risk students;

(ix) programs designed to promote gender equity in schools that serve at-risk students;

(x) improving the ability of classroom teachers and schools to assist new and diverse populations of students in successfully assimilating into the classroom environment;

(xi) methods of assessing the achievement of students which are sensitive to cultural differences, provide multiple methods of assessing student learning, support student acquisition of higher order capabilities, and enable identification of the effects of inequalities in the resources available to support the learning of children throughout the United States; and

(xii) other topics relevant to the purpose of the Institute; and

(B) maximize the participation of those schools and institutions of higher education that serve the greatest number of at-risk students in inner city and rural areas, and on Indian reservations, including model collaborative programs between schools and school systems, institutions of higher education, cultural institutions, and community organizations.

(3) Consultation with Indian and Alaska Native educators

All research and development activities supported by the Institute which relate to the education of Indian and Alaska Native students shall be developed in close consultation with Indian and Alaska Native researchers and educators, Tribally Controlled Community Colleges, tribal departments of education, and others with expertise in the needs of Indian and Native Alaska students.

Analysis

This provision encourages research by the National Institute on the Education of At-Risk Students to include information on facilitating tribal education department establishment, and requires the Institute to consult with tribal education departments in conducting its research.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as "Goals 2000," is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 provide for the research needed to ensure equitable educational opportunities and high levels of educational achievement. These parts were developed separately as Education Research bills before being incorporated into Goals 2000.

On February 4, 1993, Rep. Owens (D-NY), introduced in the House of Representatives H.R. 856, 103rd Cong. (1993), a bill to improve education by promoting excellence in research, development, and the dissemination of information, entitled the Educational Research, Development, and Dissemination Excellence Act. 139 Cong. Rec. H586-05 (1993). H.R. 856 was referred to the House Committee on Education and Labor. *Id.*

On June 30, 1993, after hearings by the House of Representatives Subcommittee on Select Education and Civil Rights, the Subcommittee approved H.R. 856 for full Committee action. 139 Cong. Rec. D744-01 (1993).

On July 28, 1993, the House of Representatives Committee on Education and Labor ordered H.R. 856 reported as amended. 139 Cong. Rec. D864-01 (1993).

On August 2, 1993, the House of Representatives Committee on Education and Labor delivered its report, H.R. Rep. No. 103-209 (1993), on H.R. 856. 139 Cong. Rec. H5662-01 (1993); 139 Cong. Rec. D893-01 (1993).

Also on August 2, 1993, the House of Representatives passed H.R. 856, as amended. 139 Cong. Rec. H5599-01 (1993). Title III of H.R. 856 provided for the establishment of National Research Institutes within the Office of Education Research and Improvement of the Department of Education. *Id.*

Within the National Research Institute Part, H.R. 856 authorized the Assistant Secretary for Education Research and Improvement generally to conduct research, development, demonstration, and evaluation activities to carry out the establishment of the Institutes. *Id.* These activities were to be conducted directly, and through grants, contracts, and cooperative agreements with various entities, including with "public-private research partnerships established by a State or local education agency, Bureau of Indian Affairs-funded school, or tribal department of education, in concert with a private organization and a team of educational researchers" 139 Cong. Rec. H5599-01 (1993).

In addition, H.R. 856 provided that one of the National Research Institutes would be the National Institute for the Education of At-Risk Students. *Id.* In carrying out its research and development activities related to the education of American Indian and Alaska Native students and in improving educational opportunities for these students, the National Institute for the Education of At-Risk Students was to consult with, among other entities,

tribal education departments. 139 Cong. Rec. H5599-01 (1993).

On August 4, 1993, the House of Representatives sent a message to the Senate stating that it had passed H.R. 856. 139 Cong. Rec. S10360-03 (1993). The Senate referred H.R. 856 to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S10360-04 (1993).

On November 3, 1993, the Senate Committee on Labor and Human Resources ordered H.R. 856 favorably reported. 139 Cong. Rec. D1239-01 (1993).

On November 16, 1993, the Senate Committee on Labor and Human Resources submitted its report on H.R. 856. 139 Cong. Rec. S15785-01 (1993); 139 Cong. Rec. D1307-02 (1993).

On February 4, 1994, Senator Kennedy (D-MA), proposed Pell Amendment No. 1409 to S. 1150, the Goals 2000: Educate America Act, and the Senate counterpart to H.R. 1804. 140 Cong. Rec. S961-02 (1994). Pell Amendment No. 1409 was entitled the Educational Research and Improvement Act of 1993. *Id.*

Section 12(e) of Pell Amendment No. 1409 provided for a national directorate on the educational achievement of historically underserved populations. 140 Cong. Rec. S961-02 (1994). This section required the Assistant Secretary for Educational Research and Improvement to conduct research on methods to improve the quality of education for American Indian and Alaska Native students in both public and BIA funded schools. *Id.* This research was to include "research on mechanisms to facilitate the establishment of tribal departments of education that assume responsibility for all education programs of State educational agencies operating on an Indian reservation and all education programs funded by the Bureau of Indian Affairs on an Indian reservation" *Id.*

On February 8, 1994, when the Senate passed H.R. 1804 as amended by S. 1150, Pell Amendment No. 1409 became Title IX of the Senate version of H.R. 1804. 140 Cong. Rec. S1422-02 (1994); 140 Cong. Rec. S1151-03 (1994). Section 912(e)(7)(A) provided for the research on mechanisms to facilitate the establishment of tribal education departments that would assume responsibility for all state and federally funded education programs on reservations. *Id.*; accord 140 Cong. Rec. S1753-02 (1994).

On February 23, 1994, the House of Representatives proposed eliminating the Senate Pell Amendment No. 1409 from H.R. 1804 and inserting, among other things, the National Research Institute Part of H.R. 856 into H.R. 1804. 140 Cong. Rec. H582-04 (1994). Within this Part, the National Institute for the Education of At-Risk Students would be required to consult with tribal education departments. *Id.*; accord 140 Cong. Rec. S2258-01 (1994).

On March 21, 1994, the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec.

H1625-03 (1994). The report recommended keeping in H.R. 1804 both the House and Senate provisions regarding tribal education departments. *Id.*

Thus, the Assistant Secretary for Educational Research and Improvement was to research mechanisms to facilitate the establishment of tribal education departments, and the National Institute for the Education of At-Risk Students was to consult with tribal education departments in its research and development activities. 140 Cong. Rec. H1625-03 (1994). The conference report on H.R. 1804 was agreed to by the House of Representatives on March 23, 1994, 140 Cong. Rec. D316-01 (1994), and by the Senate on March 25, 1994. 140 Cong. Rec. D336-02 (1994).

On March 31, 1994, H.R. 1804 was signed into law by President Clinton as Pub. L. No. 103-227, 108 Stat. 125 (1994), Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provisions on tribal education departments and education research are currently codified at 20 U.S.C. §§ 6031(e)(2)(A)(v)(I) and 6031(e)(3).

Other comments

In its original version of H.R. 856, the House of Representatives had provided for, within the National Research Institutes Part, a Teacher Education Program. 139 Cong. Rec. H5599-01 (1993). One of the expressly enumerated purposes of the program was to have the Assistant Secretary for Education Research and Improvement assist "in the development of teacher certification standards by Indian tribal departments of education." *Id.*; accord 140 Cong. Rec. H582-04 (1994). This program was not in the Senate version of H.R. 1804 and did not survive the conference report on H.R. 1804. H.R. Conf. Rep. No. 103-446 (1994).

3. 20 U.S.C. § 6041(g) provides that:

(g) Dissemination through new technologies

(1) In general

The Assistant Secretary is authorized to award grants or contracts in accordance with this subsection to support the development of materials, programs, and resources which utilize new technologies and techniques to synthesize and disseminate research and development findings and other information which can be used to support educational improvement.

(2) Electronic networking

(A) Electronic network

The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, shall establish and maintain an electronic network which shall, at a minimum, link—

- (i) each office of the Department of Education;
- (ii) the Institutes established by section 6031 of this title;
- (iii) the National Center for Education Statistics;
- (iv) the National Library of Education; and
- (v) entities engaged in research, development, dissemination, and technical assistance under grant from, or contract, or cooperative agreement with, the Department of Education.

(B) Certain requirements for network

The network described in subparagraph (A) shall—

- (i) to the extent feasible, build upon existing national, regional, and State electronic networks and support video, telecomputing, and interactive communications;
- (ii) at a minimum, have the capability to support electronic mail and file transfer services;
- (iii) be linked to and accessible to other users, including State and local education agencies, institutions of higher education, museums, libraries, and others through the Internet and the National Research and Education Network; and
- (iv) be provided at no cost (excluding the costs of necessary hardware) to the contractors and grantees described in clause (v) of subparagraph (A) and to educational institutions accessing such network through the Internet and the National Research and Education Network.

(C) Information resources

The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, may make available through the network described in subparagraph (A)—

- (i) information about grant and contract assistance available through the Department of Education;
- (ii) an annotated directory of current research and development activities and projects being undertaken with the assistance of the Department of Education;

- (iii) information about publications published by the Department of Education and, to the extent feasible, the full text of such publications;
- (iv) statistics and data published by the National Center for Education Statistics;
- (v) syntheses of research and development findings;
- (vi) a directory of other education-related electronic networks and databases, including information about the means by which such networks and databases may be accessed;
- (vii) a descriptive listing of materials and courses of instruction provided by telecommunications partnerships assisted under the Star Schools program;
- (viii) resources developed by the Educational Resources Information Center Clearinghouses;
- (ix) education-related software (including video) which is in the public domain;
- (x) a listing of instructional materials available through telecommunications to local education agencies through the Public Broadcasting Service and State educational television networks; and
- (xi) such other information and resources the Assistant Secretary considers useful and appropriate.

(D) Evaluations regarding other functions of network

The Assistant Secretary shall also undertake projects to test and evaluate the feasibility of using the network described in subparagraph (A) for—

- (i) the submission of applications for assistance to the Department of Education; and
- (ii) the collection of data and other statistics through the National Center for Education Statistics.

(E) Training and technical assistance

The Assistant Secretary, acting through the Office of Reform Assistance and Dissemination, shall—

- (i) provide such training and technical assistance as may be necessary to enable the contractors and grantees described in clause (v) of subparagraph (A) to participate in the electronic network described in such subparagraph; and
- (ii) work with the National Science Foundation to provide, upon request, assistance to State and local educational agencies, the Department of the Interior's Office of Indian Education Programs,

tribal departments of education, State library agencies, libraries, museums, and other educational institutions in obtaining access to the Internet and the National Research and Education Network.

Analysis

This provision authorizes the Assistant Secretary for Educational Research and Improvement, through the Office of Education Reform Assistance and Dissemination, to establish and maintain an electronic network and to work with the National Science Foundation to help tribal education departments gain access to the network and the Internet.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as "Goals 2000," is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 provide for the research needed to ensure equitable educational opportunities and high levels of educational achievement, and for a nationwide system for disseminating educational improvement information. These parts were developed separately as Education Research bills before being incorporated into Goals 2000.

On February 4, 1993, Rep. Owens (D-NY), introduced in the House of Representatives H.R. 856, 103rd Cong. (1993), a bill to improve education by promoting excellence in research, development, and the dissemination of information, entitled the Educational Research, Development, and Dissemination Excellence Act. 139 Cong. Rec. H586-05 (1993). H.R. 856 was referred to the House Committee on Education and Labor. *Id.*

On June 30, 1993, after hearings by the House of Representatives Subcommittee on Select Education and Civil Rights, the Subcommittee approved H.R. 856 for full Committee action. 139 Cong. Rec. D744-01 (1993).

On July 28, 1993, the House of Representatives Committee on Education and Labor ordered H.R. 856 reported as amended. 139 Cong. Rec. D864-01 (1993).

On August 2, 1993, the House of Representatives Committee on Education and Labor delivered its report, H.R. Rep. No. 103-209 (1993), on H.R. 856. 139 Cong. Rec. H5662-01 (1993); 139 Cong. Rec. D893-01 (1993).

Also on August 2, 1993, the House of Representatives passed H.R. 856 as amended. 139 Cong. Rec. H5599-01 (1993). Title III of H.R. 856 provided for the establishment of a National Education Dissemination System and an Office of Reform Assistance and Dissemination within the Office of Educational Research and Improvement of the Department of Education. *Id.* The education dissemination system was to use new

technologies, including an electronic network. *Id.*

H.R. 856 also authorized the Assistant Secretary for Educational Research and Improvement, through the Office of Reform Assistance and Dissemination, to work with the National Science Foundation to help, among other entities and agencies, tribal education departments gain access to the electronic network and the Internet. 139 Cong. Rec. H5599-01 (1993).

In the Senate, there was no counterpart version of this provision. However, in February 1994 the House of Representatives insisted on inserting this tribal education department provision from H.R. 856 into H.R. 1804. 103rd Cong. (1993); 140 Cong. Rec. H582-04 (1994); 140 Cong. Rec. S2258-01 (1994).

On March 21, 1994 the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec. H1625-03 (1994). The report recommended keeping in the provision regarding education dissemination and tribal education departments. *Id.*

The conference report on H.R. 1804 was agreed to by the House of Representatives on March 23, 1994, 140 Cong. Rec. D316-01 (1994), and by the Senate on March 25, 1994. 140 Cong. Rec. D336-02 (1994).

On March 31, 1994, H.R. 1804 was signed into law by President Clinton as Pub. L. No. 103-227, 108 Stat. 125 (1994), Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provision on tribal education departments and education dissemination via the electronic network and the Internet is currently codified at 20 U.S.C. § 6041(g)(2)(E)(ii).

4. 20 U.S.C. § 6041(i)

(i) Goals 2000 Community Partnerships Program

(1) Purpose

The purpose of the Goals 2000 Community Partnerships program is to improve the quality of learning and teaching in the most impoverished urban and rural communities of the United States by supporting sustained collaborations between universities, schools, businesses, and communities which apply and utilize the results of educational research and development.

(2) Grants for Goals 2000 Community Partnerships

The Assistant Secretary is authorized to make grants to eligible entities to support the establishment of Learning Grant Institutions and District Education Agents and the activities authorized under this subsection within eligible communities.

(3) Definition of eligible entity and eligible community

For the purposes of this subsection:

(A) The term "eligible entity" includes any institution of higher education, regional educational laboratory, National Diffusion Network project, national research and development center, public or private nonprofit corporation, or any consortium thereof, that—

- (i) has demonstrated experience, expertise and commitment in serving the educational needs of at-risk students; and
- (ii) is, by virtue of its previous activities, knowledgeable about the unique needs and characteristics of the community to be served.

(B) The term "eligible community" means a unit of general purpose local government (such as a city, township, or village), a nonmetropolitan county, tribal village, or a geographically distinct area (such as a school district, school attendance area, ward, precinct or neighborhood), or any group of such entities that—

- (i) has a population of not less than 200,000 and not more than 300,000; and
- (ii) in which not less than one-half of the school-age children have family incomes which are below the poverty line, as determined by the 1990 United States Census, participation in the National School Lunch program, or other current, reliable data concerning family income.

(4) Goals 2000 Community Partnerships

Each learning grant institution receiving assistance under this subsection shall establish a Goals 2000 community partnership to carry out the activities authorized under this subsection. Such partnership—

(A) shall include the participation of one or more local educational agencies, institutions of higher education, community-based organizations, parents, teachers, and the business community;

(B) may include the participation of human, social service and health care agencies, Head Start and child care agencies, libraries, museums, employment and training agencies, and the State educational agency or tribal department of education; and

(C) shall be broadly representative of all segments of the community in which the activities will be carried out.

(5) Comprehensive Goals 2000 plan

Each Goals 2000 Community Partnership shall develop a comprehensive plan for assuring educational success and high achievement for all students in the community. Each such plan shall—

- (A) adopt the National Education Goals;
- (B) identify additional needs and goals for educational improvement within the community;
- (C) focus on helping all students reach challenging content and student performance standards;
- (D) be consistent with the State and local improvement plans for system-wide education improvement developed pursuant to subchapter III of this chapter;
- (E) establish a comprehensive community-wide plan for achieving such goals; and
- (F) develop a means for measuring the progress of the community in meeting such goals for improvement.

(6) Implementation of community-wide plan

Each Goals 2000 Community Partnership shall, utilizing the District Education Agent, provide assistance in implementing the community-wide plan for educational improvement by—

- (A) supporting innovation, restructuring, and continuous improvement in educational practice by—
 - (i) disseminating information throughout the community about exemplary and promising educational programs, practices, products, and policies;
 - (ii) evaluating the effectiveness of federally funded educational programs within the community and identifying changes in such programs which are likely to improve student achievement;
 - (iii) identifying, selecting and replicating exemplary and promising educational programs, practices, products, and policies in both in- and out-of-school settings;
 - (iv) applying educational research to solve specific problems in the classroom, home and community which impede learning and student achievement; and
 - (v) supporting research and development by teachers, school administrators, and other practitioners which promise to improve teaching and learning and the organization of schools;
- (B) improving the capacity of educators, school administrators, child care providers and other practitioners to prepare all students to reach challenging standards and to attain the goals set out in the comprehensive community-wide plan through such means as—

- (i) the training of prospective and novice teachers (including preschool and early childhood educators) in a school setting under the guidance of master teachers and teacher educators;
- (ii) training and other activities to promote the continued learning and professional development of experienced teachers, related services personnel, school administrators to assure that such teachers develop the subject matter and pedagogical expertise needed to prepare all students to reach challenging standards;
- (iii) training and other activities to increase the ability of prospective, novice, and experienced teachers to teach effectively at-risk students, students with disabilities, students with limited-English proficiency, and students from diverse cultural backgrounds; and
- (iv) programs to enhance teaching and classroom management skills, including school-based management skills, of novice, prospective, and experienced teachers;

(C) promoting the development of an integrated system of service delivery to children from birth through age 18 and their families by facilitating linkages and cooperation among—

- (i) local educational agencies;
- (ii) health and social services agencies and providers;
- (iii) juvenile justice and criminal justice agencies;
- (iv) providers of employment training; and
- (v) child care, Head Start, and other early childhood agencies; and

(D) mobilizing the resources of the community in support of student learning and high achievement by facilitating effective partnerships and collaboration among—

- (i) local educational agencies;
- (ii) postsecondary educational institutions;
- (iii) public libraries;
- (iv) parents;
- (v) community-based organizations, neighborhood associations, and other civic and community organizations;
- (vi) child care, Head Start, and other early childhood agencies;
- (vii) churches, synagogues and other religious institutions;
- (viii) labor organizations; and
- (ix) business and industry.

(7) Additional requirements

In carrying out its responsibilities under this subsection, each partnership receiving assistance under this subsection shall—

(A) appoint a District Education Agent who shall be responsible, on a full-time basis, for directing the implementation of the community-wide plan, who shall have significant experience and expertise in the field of education in—

- (i) addressing the needs of at-risk students; and
- (ii) conducting educational research and promoting the application of the results of such research to educational practice;

(B) provide for such other professional and support personnel as may be necessary to implement the community-wide plan under the direction of the District Education Agent; and

(C) coordinate the partnership's activities and work cooperatively with the National Diffusion Network State facilitators, regional educational laboratories, and other components of the Office to utilize most effectively Federal research, development, and dissemination resources in implementing the community-wide plan.

(8) Application for grants

Any eligible entity desiring a grant under this subsection shall submit an application to the Assistant Secretary at such time, in such manner, and accompanied by such information as the Assistant Secretary may reasonably require. Each such application shall—

(A) include a comprehensive plan for meeting the objectives and requirements of this subsection; and

(B) provide evidence of support for the application from local elected officials, the State educational agency, the local educational agency, parents, local community leaders, businesses, and other appropriate organizations.

(9) Priority in making grants; duration and amount of grant

Each grant made under this subsection shall be—

(A) awarded on a competitive basis, with first priority given to those applications from communities with the greatest percentage of school-age children in families with poverty-level incomes;

(B) made for a 5-year period, with funding for the second and each succeeding year in such period conditioned upon a determination by the Assistant Secretary that the grant recipient has complied with the conditions of the grants during the previous year; and

(C) an amount equal to not less than \$1,000,000 per year.

(10) Limitation of one grant per congressional district

Not more than one grant under this subsection shall be awarded within a single congressional district.

(11) Technical assistance; evaluations

In administering the program authorized under this subsection, the Assistant Secretary shall, either directly or through grant or contract with an eligible nonprofit agency—

(A) upon request, provide technical assistance to eligible entities to assist in the development of a comprehensive community-wide plan to meet the requirements of this subsection and in the preparation of applications for assistance;

(B) regularly provide technical assistance to learning grant institutions receiving assistance under this subsection to assist with the development and implementation of the comprehensive community-wide plan for educational improvement;

(C) provide for an independent evaluation of the activities assisted under this subsection, including—

(i) the impact of the Goals 2000 Community Partnerships program on children and families within each community, including effects on the extent of educational achievement, rates of school retention and completion, and enrollment in postsecondary educational programs; and

(ii) whether an intensified effort to apply and utilize educational research within a limited geographic area significantly improves student learning and achievement; and

(D) plan for the expansion of the Goals 2000 Community Partnerships program throughout the remainder of the United States beginning in fiscal year 1999.

Analysis

This provision requires and/or encourages collaboration and partnerships among universities, schools, businesses, communities, and other entities and agencies, including tribal education departments, to use and apply the results of educational research and development activities to improve education.

History

Public Law No. 103-227, 108 Stat. 125 (1994), also known as "Goals 2000," is intended to improve learning and teaching by providing a national framework for education reform. Major parts of Goals 2000 provide for the research and collaboration at the national and local levels needed to ensure equitable educational opportunities and high levels of educational achievement. These parts were developed separately as Education Research bills before being incorporated into Goals 2000.

On February 4, 1993, Rep. Owens (D-NY), introduced in the House of Representatives H.R. 856, 103rd Cong. (1993), a bill to improve education by promoting excellence in research, development, and the dissemination of information, entitled the Educational Research, Development, and Dissemination Excellence Act. 139 Cong. Rec. H586-05 (1993). H.R. 856 was referred to the House Committee on Education and Labor. *Id.*

On June 30, 1993, after hearings by the House of Representatives Subcommittee on Select Education and Civil Rights, the Subcommittee approved H.R. 856 for full Committee action. 139 Cong. Rec. D744-01 (1993).

On July 28, 1993, the House of Representatives Committee on Education and Labor ordered H.R. 856 reported as amended. 139 Cong. Rec. D864-01 (1993).

On August 2, 1993, the House of Representatives Committee on Education and Labor delivered its report, H.R. Rep. No. 103-209 (1993), on H.R. 856. 139 Cong. Rec. H5662-01 (1993); 139 Cong. Rec. D893-01 (1993).

Also on August 2, 1993, the House of Representatives passed H.R. 856 as amended. 139 Cong. Rec. H5599-01 (1993). Title III of H.R. 856 provided for the establishment of a National Education Dissemination System and an Office of Reform Assistance and Dissemination within the Office of Educational Research and Improvement of the Department of Education. *Id.*

In identifying successful educational programs and information for dissemination, H.R. 856 required the Assistant Secretary for Educational Research and Improvement to work closely with partnerships required or encouraged under Goals 2000. 139 Cong. Rec. H5599-01 (1993). Regarding learning grant institutions receiving Goals 2000 Community Partnership grants, H.R. 856 permitted these institutions to include tribal

education departments among their partnerships. *Id.*

In the Senate there was no counterpart provision. However, in February, 1994 the House of Representatives insisted on inserting this provision from H.R. 856 into H.R. 1804, 103rd Cong. (1993). 140 Cong. Rec. H582-04 (1994); 140 Cong. Rec. S2258-01 (1994).

On March 21, 1994 the House of Representatives submitted the report, H.R. Conf. Rep. No. 103-446 (1994), of the committee of conference on H.R. 1804. 140 Cong. Rec. H1625-03 (1994). The report recommended keeping in H.R. 1804 the provision regarding Goals 2000 Community Partnerships and tribal education departments. *Id.*

The conference report on H.R. 1804 was agreed to by the House of Representatives on March 23, 1994, 140 Cong. Rec. D316-01 (1994), and by the Senate on March 25, 1994. 140 Cong. Rec. D336-02 (1994).

On March 31, 1994, H.R. 1804 was signed into law by President Clinton as Pub. L. No. 103-227, Goals 2000: Educate America Act. 140 Cong. Rec. D345-02 (1994). The provision on Goals 2000 Community Partnerships and tribal education departments is currently codified at 20 U.S.C. § 6041(i)(4)(B).

D. The Improving America's Schools Act of 1994, Pub. L. No. 103-382

1. 20 U.S.C. § 7835 - Grants to tribes for education administrative planning and development

(a) In general

The Secretary may make grants to Indian tribes, and tribal organizations approved by Indian tribes, to plan and develop a centralized tribal administrative entity to—

- (1) coordinate all education programs operated by the tribe or within the territorial jurisdiction of the tribe;
- (2) develop education codes for schools within the territorial jurisdiction of the tribe;
- (3) provide support services and technical assistance to schools serving children of the tribe; and
- (4) perform child-find screening services for the preschool-aged children of the tribe to—

- (A) ensure placement in appropriate educational facilities; and
- (B) coordinate the provision of any needed special services for conditions such as disabilities and English language skill deficiencies.

(b) Period of grant

Each grant under this section may be awarded for a period of not more than 3 years, except that such grant may be renewed upon the termination of the initial period of the grant if the grant recipient demonstrates to the satisfaction of the Secretary that renewing the grant for an additional 3-year period is necessary to carry out the objectives of the grant described in subsection (c)(2)(A) of this section.

(c) Application for grant

(1) In general

Each Indian tribe and tribal organization desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, containing such information, and consistent with such criteria, as the Secretary may prescribe in regulations.

(2) Contents

Each application described in paragraph (1) shall contain—

- (A) a statement describing the activities to be conducted, and the objectives to be achieved, under the grant; and
- (B) a description of the method to be used for evaluating the effectiveness of the activities for which assistance is sought and determining whether such objectives are achieved.

(3) Approval

The Secretary may approve an application submitted by a tribe or tribal organization pursuant to this section only if the Secretary is satisfied that such application, including any documentation submitted with the application—

- (A) demonstrates that the applicant has consulted with other education entities, if any, within the territorial jurisdiction of the applicant who will be affected by the activities to be conducted under the grant;
- (B) provides for consultation with such other education entities in the operation and evaluation of the activities conducted under the grant; and
- (C) demonstrates that there will be adequate resources provided under this section or from other sources to complete the activities for which assistance is sought, except that the availability of such other resources shall not be a basis for disapproval of such application.

(d) Restriction

A tribe may not receive funds under this section if such tribe receives funds under section 2024 of Title 25.

(e) Authorization of appropriations

There are authorized to be appropriated to the Department of Education \$3,000,000 for each of the fiscal years 1995 through 1999 to carry out this section.

Analysis

This section authorizes appropriations of \$3 million to the Department of Education to fund tribal education departments and codes.

History

The Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (IASA), is a six-year reauthorization of appropriations for many of the programs under the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965) (ESEA). The ESEA is the principal law by which states and public schools get federal aid for elementary and secondary education. Major ESEA programs include Title I, Even Start, Magnet Schools, Gifted and Talented Students, Bilingual Education, and Impact Aid.

The IASA also reformed the ESEA by promoting greater educational achievement in exchange for eliminating many of the funding use restrictions at the national level and allowing schools more power and flexibility in deciding how the funding will be used at the local level.

On January 5, 1993, Representative Kildee (D-MI) introduced in the House of Representatives H.R. 6, 103rd Cong. (1993), a bill to extend for 6 years the authorization of appropriations for the programs under the Elementary and Secondary Education Act of 1965. 139 Cong. Rec. H82-01 (1993); 139 Cong. Rec. E5-01 (1993). H.R. 6 was referred to the House Committee on Education and Labor. 139 Cong. Rec. H82-01 (1993).

On October 4, 1993, Senator Kennedy (D-MA) introduced in the Senate S. 1513, 103rd Cong. (1993), a bill to reauthorize the Elementary and Secondary Education Act of 1965 entitled "Improving America's Schools Act of 1993." 139 Cong. Rec. S12928-07 (1993); 139 Cong. Rec. D1078-02 (1993). As introduced, S. 1513 did not contain any new provisions regarding tribal education departments. S. 1513 was referred to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S12928-06.

On February 1, 1994, the House of Representatives Subcommittee on Elementary,

Secondary, and Vocational Education approved for full Committee action H.R. 6 as amended, the Elementary and Secondary Education Amendments of 1993. 140 Cong. Rec. D62-01 (1994). On February 8, 1994, the House of Representatives Committee on Education and Labor ordered reported H.R. 6 as amended. 140 Cong. Rec. D95-01 (1994).

On February 16, 1994, the House of Representatives Committee on Education and Labor filed its report, H.R. Rep. No. 103-425 (1994), on H.R. 6 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. H559-01 (1994); 140 Cong. Rec. D132-01 (1994). As reported, H.R. 6 did not contain any new provisions regarding tribal education departments.

On February 23, 1994, the House of Representatives Committee on Rules submitted a resolution, H.R. Res. 366, 103rd Cong. (1994), providing for the consideration of H.R. 6. 140 Cong. Rec. H678-04 (1994); 140 Cong. Rec. D141-01; 140 Cong. Rec. H798-03 (1994). The Committee on Rules also submitted a privileged report, H.R. Rep. No. 103-426 (1994), to accompany H.R. Res. 366. 140 Cong. Rec. H651-02 (1994).

On March 24, 1995, the House of Representatives passed H.R. 6 as amended. 140 Cong. Rec. D329-01 (1994).

On April 19, 1994, the Senate received a message from the House of Representatives that the House had passed H.R. 6 and requested the concurrence of the Senate therein. 140 Cong. Rec. S4462-02 (1994). The Senate referred H.R. 6 to the Senate Committee on Labor and Human Resources. 140 Cong. Rec. S4463-01 (1994).

On May 4, 1994, the Senate Committee on Indian Affairs held hearings on the Indian education provisions of S. 1513 and H.R. 6. 140 Cong. Rec. D482-02 (1994). Among those testifying at the hearings was Phil Baird, the President of the National Indian Education Association (NIEA). Mr. Baird stated that:

Tribes need federal funding to help develop tribal departments of education which can engage in developmental work and place them in better positions to negotiate or enter into agreements with state and local governments as equal partners in our nation's school reform efforts.

Testimony of the National Indian Education Association before the Senate Committee on Indian Affairs on the Reauthorization of Elementary and Secondary Education Programs, 1994 WL 232500 (F.D.C.H. May 4, 1994).

Mr. Baird went on to state that NIEA proposed a new program within the Indian Education Act of 1972. *Id.* Under the new program, grants through the Department of Education would be authorized for tribes

to develop education codes, to coordinate education programs, [and] to provide technical and support services to schools serving Indian children....This grant program is not included in H.R. 6, and we ask that it be adopted as part of the Senate bill.

Id.

On June 15, 1994, the Senate Committee on Labor and Human Resources ordered S. 1513 as amended favorably reported. 140 Cong. Rec. D672-01 (1994).

On June 24, 1994, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-292 (1994), on S. 1513. 140 Cong. Rec. S7638-01 (1994); 140 Cong. Rec. D731-01 (1994).

On July 15, 1994, the Senate Committee on Indian Affairs submitted its report, S. Rep. No. 103-314 (1994), on S. 1513. 140 Cong. Rec. S9121-08 (1994); 140 Cong. Rec. D819-02 (1994). The Committee on Indian Affairs recommended a new program under the authority of the Indian Education Act of 1972, Pub. L. No. 92-318, 86 Stat. 334 (1972). S. Rep. No. 103-314 (1994). Under the new program, the Secretary of Education would be authorized \$3 million to fund tribal education departments to develop tribal education codes, engage in education planning, and coordinate education programs on Indian reservations. *Id.*

On July 27, 1994, the Senate began consideration of S. 1513 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. D885-02 (1994). Section 6206 of the version under consideration contained the Senate Committee on Indian Affairs' recommended new tribal education department funding authorization through the Department of Education. 140 Cong. Rec. S9763-02 (1994).

On August 2, 1994, the Senate passed H.R. 6 as amended by S. 1513 as amended, and requested a conference with the House of Representatives on the two versions of H.R. 6. 140 Cong. Rec. S10281-01 (1994); 140 Cong. Rec. D919-02 (1994). H.R. 6 as amended as passed by the Senate contained Section 6206, the new Department of Education tribal education department funding authorization. 140 Cong. Rec. S10719-01 (1994).

On August 9, 1994, the House of Representatives received a message from the Senate that the Senate had passed H.R. 6 as amended and requesting the concurrence of the House in the same. 140 Cong. Rec. H7204-05 (1994). The message also announced that the Senate insisted upon its amendment to H.R. 6 and requested a conference with the House on the disagreeing versions of H.R. 6. *Id.*

On September 20, 1994, the House of Representatives disagreed to the Senate amendments to H.R. 6, but agreed to go to conference on the matter. 140 Cong. Rec. D1085-01 (1994). The Senate received this message from the House on September 21, 1994. 140 Cong. Rec. S13093-08 (1994).

On September 27, 1994, the conferees agreed to file a conference report on the

differences between the Senate and House-passed versions of H.R. 6. 140 Cong. Rec. D1140-01 (1994).

On September 28, 1994, the Committee of Conference submitted its report, H.R. Conf. Rep. No. 103-761 (1994), on H.R. 6. 140 Cong. Rec. H10006-05 (1994); 140 Cong. Rec. D1153-01 (1994). The committee of conference recommended generally that the House of Representatives recede from its disagreement to the amendment of the Senate to H.R. 6, and agree to the same with an amendment. 140 Cong. Rec. H10009-01 (1994).

Regarding tribal education department funding, the committee on conference recommended keeping in the Senate version of H.R. 6, which authorized \$3 million for tribal education departments through the Department of Education in addition to the authorization through the Department of the Interior enacted in 1988 under Pub. L. No. 100-297, 102 Stat. 130 (1988). 140 Cong. Rec. H10009-01 (1994). The House of Representatives receded with an amendment prohibiting the same tribe from receiving tribal education department funding under both the Department of Education and the Department of the Interior authorizations. *Id.*

On September 30, 1994, the House of Representatives, by H.R. Res. No. 556, 103rd Cong. (1994), considered and agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. H10382-03 (1994); 140 Cong. Rec. D1174-01 (1994). That same date, the Senate received a message from the House of Representatives that the House had agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. S13851-02 (1994).

On October 5, 1994, the Senate agreed to the conference report on H.R. 6. 140 Cong. Rec. D1210-02 (1994). On October 6, 1994, the House of Representatives received a message from the Senate that the Senate had agreed to the report of the committee of conference on H.R. 6. 140 Cong. Rec. H11009-04 (1994).

On October 18, 1994, the House of Representatives Committee on House Administration presented H.R. 6 to the President for his approval. 140 Cong. Rec. H11562-03 (1994).

On October 20, 1994, H.R. 6 was signed into law by President Clinton as Pub. L. No. 103-382, 108 Stat. 3518 (1994). 140 Cong. Rec. D1257-01 (1994). The provision on tribal education department funding authorizations through the Department of Education is currently codified at 20 U.S.C. § 7835. To date no appropriations have been approved under this authorization.

2. 20 U.S.C. § 8622 provides that

(a) In general

Each comprehensive regional assistance center established under section 8621(a) of this title shall—

(1) maintain appropriate staff expertise and provide support, training, and assistance to State educational agencies, tribal divisions of education, local educational agencies, schools, and other grant recipients under this chapter, in—

(A) improving the quality of instruction, curricula, assessments, and other aspects of school reform, supported with funds under subchapter 1 of this chapter;

(B) implementing effective schoolwide programs under section 6314 of this title;

(C) meeting the needs of children served under this chapter, including children in high-poverty areas, migratory children, immigrant children, children with limited-English proficiency, neglected or delinquent children, homeless children and youth, Indian children, children with disabilities, and, where applicable, Alaska Native children and Native Hawaiian children;

(D) implementing high-quality professional development activities for teachers, and where appropriate, administrators, pupil services personnel and other staff;

(E) improving the quality of bilingual education, including programs that emphasize English and native language proficiency and promote multicultural understanding;

(F) creating safe and drug-free environments, especially in areas experiencing high levels of drug use and violence in the community and school;

(G) implementing educational applications of technology;

(H) coordinating services and programs to meet the needs of students so that students can fully participate in the educational program of the school;

(I) expanding the involvement and participation of parents in the education of their children;

(J) reforming schools, school systems, and the governance and management of schools;

(K) evaluating programs; and

(L) meeting the special needs of students living in urban and rural areas and the special needs of local educational agencies serving urban and rural areas;

(2) ensure that technical assistance staff have sufficient training, knowledge, and expertise in how to integrate and coordinate programs under this chapter with

- each other, as well as with other Federal, State, and local programs and reforms;
- (3) provide technical assistance using the highest quality and most cost-effective strategies possible;
 - (4) coordinate services, work cooperatively, and regularly share information with, the regional educational laboratories, the Eisenhower regional consortia under part C, research and development centers, State literacy centers authorized under the National Literacy Act of 1991, and other entities engaged in research, development, dissemination, and technical assistance activities which are supported by the Department as part of a Federal technical assistance system, to provide a broad range of support services to schools in the region while minimizing the duplication of such services;
 - (5) work collaboratively with the Department's regional offices;
 - (6) consult with representatives of State educational agencies, local educational agencies, and populations served under this chapter;
 - (7) provide services to States, local educational agencies, tribes, and schools, in coordination with the National Diffusion Network State Facilitators activities under section 8651 of this title, in order to better implement the purposes of this part and provide the support and assistance diffusion agents need to carry out such agents' mission effectively; and
 - (8) provide professional development services to State educational agencies, local educational agencies, and the National Diffusion Network State Facilitators to increase the capacity of such entities to provide high-quality technical assistance in support of programs under this chapter.

(b) Priority

Each comprehensive regional assistance center assisted under this part shall give priority to servicing—

- (1) schoolwide programs under section 6314 of this title; and
- (2) local educational agencies and Bureau-funded schools with the highest percentages or numbers of children in poverty.

Analysis

This section requires the Comprehensive Regional Assistance Centers established under the Improving America's Schools Act of 1994 to provide support, training, and assistance to tribal education departments.

History

The Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (IASA), is a six-year reauthorization of appropriations for many of the programs under the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965) (ESEA). The ESEA is the principal law by which states and public schools get federal aid for elementary and secondary education. Major ESEA programs include Title I, Even Start, Magnet Schools, Gifted and Talented Students, Bilingual Education, and Impact Aid.

The IASA also reformed the ESEA by promoting greater educational achievement in exchange for eliminating many of the funding use restrictions at the national level and allowing schools more power in deciding how the funding will be used at the local level. Part of this overall strategy includes the establishment of a national technical assistance and dissemination system to help states, tribes, and higher education institutions help local schools improve teaching and learning.

On January 5, 1993, Representative Kildee (D-MI) introduced in the House of Representatives H.R. 6, 103rd Cong. (1993), a bill to extend for 6 years the authorization of appropriations for the programs under the Elementary and Secondary Education Act of 1965. 139 Cong. Rec. H82-01 (1993); 139 Cong. Rec. E5-01 (1993). H.R. 6 was referred to the House Committee on Education and Labor. 139 Cong. Rec. H82-01 (1993).

On October 4, 1993, Senator Kennedy (D-MA) introduced in the Senate S. 1513, 103rd Cong. (1993) a bill to reauthorize the Elementary and Secondary Education Act of 1965 entitled "Improving America's Schools Act of 1993." 139 Cong. Rec. S12928-07 (1993); 139 Cong. Rec. D1078-02 (1993). As introduced, S. 1513 did not contain any new provisions regarding tribal education departments. S. 1513 was referred to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S12928-06.

On February 1, 1994, the House of Representatives Subcommittee on Elementary, Secondary, and Vocational Education approved for full Committee action H.R. 6 as amended, the Elementary and Secondary Education Amendments of 1993. 140 Cong. Rec. D62-01 (1994). On February 8, 1994, the House of Representatives Committee on Education and Labor ordered reported H.R. 6 as amended. 140 Cong. Rec. D95-01 (1994).

On February 16, 1994, the House of Representatives Committee on Education and Labor filed its report, H.R. Rep. No. 103-425 (1994), on H.R. 6 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. H559-01 (1994); 140 Cong. Rec. D132-01 (1994).

Title II, Part D of H.R. 6 provided generally for support and assistance for ESEA programs. H.R. Rep. No. 103-425 (1994). Section 2343 of H.R. 6 authorized fifteen Comprehensive Assistance Centers which would provide comprehensive, integrated, and research-based training and technical assistance to states, tribes, and community-based organizations in their administration and implementation of ESEA programs. *Id.* Section 2345(b) of H.R. 6 expressly included tribal education departments as among the agencies that the Comprehensive Assistance Centers must serve. *Id.*

On February 23, 1994, the House of Representatives Committee on Rules submitted a resolution, H.R. Res. 366, 103rd Cong. (1994), providing for the consideration of H.R. 6. 140 Cong. Rec. H678-04 (1994); 140 Cong. Rec. D141-01; 140 Cong. Rec. H798-03 (1994). The Committee on Rules also submitted a privileged report, H.R. Rep. No. 103-426 (1994), to accompany H.R. Res. 366. 140 Cong. Rec. H651-02 (1994).

On March 24, 1995, the House of Representatives passed H.R. 6 as amended. 140 Cong. Rec. D329-01 (1994).

On April 19, 1994, the Senate received a message from the House of Representatives that the House had passed H.R. 6 and requested the concurrence of the Senate therein. 140 Cong. Rec. S4462-02 (1994). The Senate referred H.R. 6 to the Senate Committee on Labor and Human Resources. 140 Cong. Rec. S4463-01 (1994).

On June 15, 1994, the Senate Committee on Labor and Human Resources ordered S. 1513 as amended favorably reported. 140 Cong. Rec. D672-01 (1994).

On June 24, 1994, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-292 (1994), on S. 1513. 140 Cong. Rec. S7638-01 (1994); 140 Cong. Rec. D731-01 (1994).

On July 27, 1994, the Senate began consideration of S. 1513 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. D885-02 (1994).

On August 2, 1994, the Senate passed H.R. 6 as amended by S. 1513 as amended, and requested a conference with the House of Representatives on the two versions of H.R. 6. 140 Cong. Rec. S10281-01 (1994); 140 Cong. Rec. D919-02 (1994). Regarding the support and assistance for ESEA programs, the Senate version of H.R. 6 as amended by S. 1513 as amended, did not include tribes as a recipient of these services. 140 Cong. Rec. S10719-01 (1994).

On August 9, 1994, the House of Representatives received a message from the Senate that the Senate had passed H.R. 6 as amended and requesting the concurrence of the House in the same. 140 Cong. Rec. H7204-05 (1994). The message also announced that the Senate insisted upon its amendment to H.R. 6 and requested a conference with the House on the disagreeing versions of H.R. 6. *Id.*

On September 20, 1994, the House of Representatives disagreed to the Senate amendments to H.R. 6, but agreed to go to conference on the matter. 140 Cong. Rec. D1085-01 (1994). The Senate received this message from the House on September 21, 1994. 140 Cong. Rec. S13093-08 (1994).

On September 27, 1994, the conferees agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 6. 140 Cong. Rec. D1140-01 (1994).

On September 28, 1994, the Committee of Conference submitted its report, H.R. Conf. Rep. No. 103-761 (1994), on H.R. 6. 140 Cong. Rec. H10006-05 (1994); 140 Cong. Rec. D1153-01 (1994). The committee of conference recommended generally that the House of Representatives recede from its disagreement to the amendment of the Senate to H.R. 6, and agree to the same with an amendment. 140 Cong. Rec. H10009-01 (1994).

Regarding the support and assistance for ESEA programs, the committee on conference recommended keeping the Comprehensive Assistance Centers in H.R. 6 under Title XIII, Part A, as Comprehensive Regional Assistance Centers. H.R. Conf. Rep. No. 103-761 (1994); 140 Cong. Rec. H10009-01 (1994). As H.R. 6 had originally proposed, Section 13102 of the conference version of H.R. 6 required the Centers to serve, among other agencies, tribal education departments. *Id.*

On September 30, 1994, the House of Representatives, by H.R. Res. No. 556, 103rd Cong. (1994), considered and agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. H10382-03 (1994); 140 Cong. Rec. D1174-01 (1994). That same date, the Senate received a message from the House of Representatives that the House had agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. S13851-02 (1994).

On October 5, 1994, the Senate agreed to the conference report on H.R. 6. 140 Cong. Rec. D1210-02 (1994). On October 6, 1994, the House of Representatives received a message from the Senate that the Senate had agreed to the report of the committee of conference on H.R. 6. 140 Cong. Rec. H11009-04 (1994).

On October 18, 1994, the House of Representatives Committee on House Administration presented H.R. 6 to the President for his approval. 140 Cong. Rec. H11562-03 (1994).

On October 20, 1994, H.R. 6 was signed into law by President Clinton as Pub. L. No. 103-382, 108 Stat. 3518 (1994). 140 Cong. Rec. D1257-01 (1994). The provision on tribal education departments and the Comprehensive Regional Assistance Centers is currently codified at 20 U.S.C. § 8622(a)(1).

3. 20 U.S.C. § 8651 provides that:

(a) Authority

(1) In general

In order to implement the purposes of this subchapter, the Secretary is authorized to establish the National Diffusion Network (hereafter referred to in this chapter as "NDN") to carry out a State-based outreach, consultation, training, and dissemination program.

(2) Program requirements

In carrying out the program under this part, the Secretary shall award grants and contracts to National Diffusion Network State Facilitators in each State and outlying area, and to the Bureau of Indian Affairs, in order to assist State and local educational agencies, schools, and other appropriate educational entities—

(A) to identify and secure appropriate, high-quality technical assistance from the comprehensive regional assistance centers under part A of this subchapter and other sources; and

(B) to identify and implement exemplary or promising educational programs and practices.

(b) Eligible entities

The Secretary shall award grants and contracts under this section to public or private nonprofit organizations or institutions with demonstrated expertise in the areas of applied education research and program dissemination.

(c) Administration

The program under this part shall be administered through the Office of Reform Assistance and Dissemination established under section 6041(b) of this title .

(d) Coordination

The National Diffusion Network State Facilitators shall work in close cooperation, and coordinate their activities, with the comprehensive regional assistance centers established under part A of this subchapter.

(e) State facilitator activities

The National Diffusion Network State Facilitators shall provide professional development and technical assistance services to assist State educational agencies, local educational agencies, tribal divisions of education, schools, family and adult literacy programs, and other entities assisted under this chapter, in--

- (1) defining such entities' technical assistance needs and aligning such needs with school reform under subchapter I of this chapter, professional development, and technology plans;
- (2) securing the technical assistance and professional development services that can best fulfill such needs by utilizing the services of the comprehensive regional assistance centers, the regional education laboratories, the Eisenhower regional consortia, State Literacy Resource Centers authorized under the National Literacy Act of 1991 and other technical assistance providers, including local providers of professional development services;
- (3) identifying educational technology needs and securing the necessary technical assistance to address such needs in coordination with the Eisenhower regional consortia under part C and the regional technical assistance and professional development consortia under subpart 3 of subchapter III of this chapter; and
- (4) utilizing technology, including regional and national electronic networks, to increase such entities' access to technical assistance, professional development services, and dissemination of effective programs and promising practices.

(f) Additional duties

In addition, National Diffusion Network State Facilitators shall--

- (1) disseminate information about school reform and effective and promising practices, and help local educational agencies and schools adapt such reform and practices to such agencies' needs;
- (2) identify educational programs and practices for possible dissemination throughout the State and Nation;
- (3) promote and facilitate teacher networks throughout the State;
- (4) develop and implement an aggressive outreach plan for reaching the local educational agencies and schools receiving priority under section 8701 of this title; and
- (5) provide such other outreach, coordination, and dissemination services as may be necessary to achieve the purposes of this subchapter.

(g) National Diffusion Network effective programs and promising practices system

(1) In general

The Secretary shall develop a system of validating effective programs and promising practices for dissemination through the National Diffusion Network. Such system may include exemplary programs funded through any office of the Department, the National Science Foundation, or other Federal agencies and shall be coordinated, aligned with, and administered by, the Office of Reform Assistance and Dissemination established under section 6041(b) of this title.

(2) Priority

The Secretary shall give priority to identifying, validating, and disseminating effective schoolwide projects, programs addressing the needs of high poverty schools, and programs with the capacity to offer high-quality, sustained technical assistance. The Office of Educational Research and Improvement Office of Reform Assistance and Dissemination shall also administer a grant program for the purpose of dissemination and the provision of technical assistance regarding such system.

(3) Priority of services

The National Diffusion Network State Facilitators shall give priority in providing the services described in this section to—

- (A) schoolwide program under section 6314 of this title; and
- (B) local educational agencies and Bureau-funded schools with the highest percentages or numbers of children in poverty.

Analysis

This section requires the National Diffusion Network State Facilitators established under the Improving America's Schools Act of 1994 to serve tribal education departments.

History

The Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994) (IASA), is a six-year reauthorization of appropriations for many of the programs under the Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, 79 Stat. 27 (1965) (ESEA). The ESEA is the principal law by which states and public schools get federal aid for elementary and secondary education. Major ESEA programs include Title I, Even Start, Magnet Schools, Gifted and Talented Students, Bilingual Education, and Impact Aid.

The IASA also reformed the ESEA by promoting greater educational achievement in exchange for eliminating many of the funding use restrictions at the national level and allowing schools more power in deciding how the funding will be used at the local level. Part of this overall strategy includes the establishment of a national comprehensive technical assistance and effective program dissemination system to help states, tribes, and higher education institutions help local schools improve teaching and learning.

On January 5, 1993, Representative Kildee (D-MI) introduced in the House of Representatives H.R. 6, 103rd Cong. (1993), a bill to extend for 6 years the authorization of appropriations for the programs under the Elementary and Secondary Education Act of 1965. 139 Cong. Rec. H82-01 (1993); 139 Cong. Rec. E5-01 (1993). H.R. 6 was referred to the House Committee on Education and Labor. 139 Cong. Rec. H82-01 (1993).

On October 4, 1993, Senator Kennedy (D-MA) introduced in the Senate S. 1513, 103rd Cong. (1993), a bill to reauthorize the Elementary and Secondary Education Act of 1965 entitled "Improving America's Schools Act of 1993." 139 Cong. Rec. S12928-07 (1993); 139 Cong. Rec. D1078-02 (1993). As introduced, S. 1513 did not contain any new provisions regarding tribal education departments. S. 1513 was referred to the Senate Committee on Labor and Human Resources. 139 Cong. Rec. S12928-06.

On February 1, 1994, the House of Representatives Subcommittee on Elementary, Secondary, and Vocational Education approved for full Committee action H.R. 6 as amended, the Elementary and Secondary Education Amendments of 1993. 140 Cong. Rec. D62-01 (1994). On February 8, 1994, the House of Representatives Committee on Education and Labor ordered reported H.R. 6 as amended. 140 Cong. Rec. D95-01 (1994).

On February 16, 1994, the House of Representatives Committee on Education and Labor filed its report, H.R. Rep. No. 103-425 (1994), on H.R. 6 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. H559-01 (1994); 140 Cong. Rec. D132-01 (1994).

Title II, Part D of H.R. 6 provided generally for support and assistance for ESEA programs. H.R. Rep. No. 103-425 (1994). Section 2347 of H.R. 6 provided for the establishment of a National Diffusion Network to help disseminate teaching and learning improvements and to provide outreach, training, and consultation on the same. *Id.* Section 2347(c) required the National Diffusion Network Facilitators to work with the Comprehensive Assistance Centers to serve, among other agencies, tribal education departments. *Id.*

On February 23, 1994, the House of Representatives Committee on Rules submitted a resolution, H.R. Res. 366, 103rd Cong. (1994), providing for the consideration of H.R. 6. 140 Cong. Rec. H678-04 (1994); 140 Cong. Rec. D141-01; 140 Cong. Rec. H798-03 (1994). The Committee on Rules also submitted a privileged report, H.R. Rep. No.

103-426 (1994), to accompany H.R. Res. 366. 140 Cong. Rec. H651-02 (1994).

On March 24, 1995, the House of Representatives passed H.R. 6 as amended. 140 Cong. Rec. D329-01 (1994).

On April 19, 1994, the Senate received a message from the House of Representatives that the House had passed H.R. 6 and requested the concurrence of the Senate therein. 140 Cong. Rec. S4462-02 (1994). The Senate referred H.R. 6 to the Senate Committee on Labor and Human Resources. 140 Cong. Rec. S4463-01 (1994).

On June 15, 1994, the Senate Committee on Labor and Human Resources ordered S. 1513 as amended favorably reported. 140 Cong. Rec. D672-01 (1994).

On June 24, 1994, the Senate Committee on Labor and Human Resources submitted its report, S. Rep. No. 103-292 (1994), on S. 1513. 140 Cong. Rec. S7638-01 (1994); 140 Cong. Rec. D731-01 (1994).

On July 27, 1994, the Senate began consideration of S. 1513 as amended, now entitled the Improving America's Schools Act of 1994. 140 Cong. Rec. D885-02 (1994).

On August 2, 1994, the Senate passed H.R. 6 as amended by S. 1513 as amended, and requested a conference with the House of Representatives on the two versions of H.R. 6. 140 Cong. Rec. S10281-01 (1994); 140 Cong. Rec. D919-02 (1994). H.R. 6 as amended by S. 1513 did not include tribes as being recipients of the support and assistance for ESEA programs provisions. 140 Cong. Rec. S10719-01 (1994).

On August 9, 1994, the House of Representatives received a message from the Senate that the Senate had passed H.R. 6 as amended and requesting the concurrence of the House in the same. 140 Cong. Rec. H7204-05 (1994). The message also announced that the Senate insisted upon its amendment to H.R. 6 and requested a conference with the House on the disagreeing versions of H.R. 6. *Id.*

On September 20, 1994, the House of Representatives disagreed to the Senate amendments to H.R. 6, but agreed to go to conference on the matter. 140 Cong. Rec. D1085-01 (1994). The Senate received this message from the House on September 21, 1994. 140 Cong. Rec. S13093-08 (1994).

On September 27, 1994, the conferees agreed to file a conference report on the differences between the Senate and House-passed versions of H.R. 6. 140 Cong. Rec. D1140-01 (1994).

On September 28, 1994, the Committee of Conference submitted its report, H.R. Conf. Rep. No. 103-761 (1994), on H.R. 6. 140 Cong. Rec. H10006-05 (1994); 140 Cong. Rec. D1153-01 (1994). The committee of conference recommended generally that the House of Representatives recede from its disagreement to the amendment of the Senate to H.R.

6, and agree to the same with an amendment. 140 Cong. Rec. H10009-01 (1994).

Regarding the support and assistance for ESEA program provisions, the committee on conference recommended keeping in the National Diffusion Network provisions, which were similar in both the House and Senate bills. 140 Cong. Rec. H10009-01 (1994). The Senate agreed to list the recipients of this system as including, among other agencies, tribal education departments. *Id.*

On September 30, 1994, the House of Representatives, by H.R. Res. No. 556, 103rd Cong. (1994), considered and agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. H10382-03 (1994); 140 Cong. Rec. D1174-01 (1994). That same date, the Senate received a message from the House of Representatives that the House had agreed to the report of the committee on conference regarding H.R. 6. 140 Cong. Rec. S13851-02 (1994).

On October 5, 1994, the Senate agreed to the conference report on H.R. 6. 140 Cong. Rec. D1210-02 (1994). On October 6, 1994, the House of Representatives received a message from the Senate that the Senate agrees to the report of the committee of conference on H.R. 6. 140 Cong. Rec. H11009-04 (1994).

On October 18, 1994, the House of Representatives Committee on House Administration presented H.R. 6 to the President for his approval. 140 Cong. Rec. H11562-03 (1994).

On October 20, 1994, H.R. 6 was signed into law by President Clinton as Pub. L. No. 103-382, 108 Stat. 3518 (1994). 140 Cong. Rec. D 1257-01 (1994). The provision on tribal education departments and the National Diffusion Network is currently codified at 20 U.S.C. § 8651(e).

E. Tribal Education Departments in Congress, 1995 - 1999

No new substantive provisions regarding tribal education departments have been enacted by Congress since 1994. Indeed, some proposed legislation would eliminate existing substantive provisions for tribal education departments.

Nor have any appropriations for tribal education departments been authorized during this period. Organizations such as NARF and NIEA have testified regularly before various congressional committees in support of appropriations to fund tribal education departments.

1. H.R. 1960 and S. 1180, the Educational Excellence for All Children Act of 1999

On May 26, 1999, Representative Clay (D-MO) introduced in the House of Representatives H.R. 1960, 106th Cong. (1999), a bill to amend the Elementary and Secondary Education Act of 1965, to reauthorize and make improvements to that Act, and for other purposes, entitled the Educational Excellence for All Children Act of 1999. 145

Cong. Rec. H3693-02 (1999). H.R. 1960 has been referred to the House Committee on Education and the Workforce. *Id.*

On May 27, 1999, Senator Kennedy (D-MA) introduced in the Senate S. 1180, 106th Cong. (1999), a bill to amend the Elementary and Secondary Education Act of 1965, to reauthorize and make improvements to that Act, and for other purposes, entitled the Educational Excellence for All Children Act of 1999. 145 Cong. Rec. S6284-02 (1999); 145 Cong. Rec. S6286-02 (1999). S. 1180 has been referred to the Senate Committee on Health, Education, Labor, and Pensions. *Id.*

The virtually identical H.R. 1960 and S. 1180 were developed by the Administration. Title IX of S. 1180 deals with Indian education. Section 911 of Title IX would eliminate the appropriation authorization for tribal education department funding through the Department of Education, enacted by the Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3518 (1994), and currently codified at 20 U.S.C. § 7835. The section-by-section analysis of S. 1180 prepared by the Administration states that the elimination of the tribal education department authorization provision, along with other sections, is due to these provisions not having been funded, and that "[t]he goals of these provisions ... are more effectively addressed through other programs." 145 Cong. Rec. S6286-02 (1999).

2. H.R. 2 and H.R. Res. 303, the Dollars to the Classroom Act of 1999

On February 11, 1999, Representative Goodling (R-PA), introduced in the House of Representatives H.R. 2, 106th Cong. (1999), a bill to send more dollars to the classroom, entitled the Dollars to the Classroom Act. 145 Cong. Rec. H589-04 (1999); 145 Cong. Rec. H641-02 (1999); 145 Cong. Rec. D133-01 (1999). H.R. 2 would consolidate some of the funding for Elementary and Secondary Education Act programs and much of the funding for Goals 2000 and Improving America's Schools Act programs into a single formula grant (*i.e.*, "block grant") program for states.

By eliminating many programs established by Goals 2000 and the Improving America's Schools Act, H.R. 2 would eliminate the specific provisions for tribal education departments under those laws. This would include the provisions for grants from the Secretary of Education to tribal education departments to coordinate BIA and public school reform plans, currently codified at 20 U.S.C. § 5894, and the provisions for tribal education department assistance from the Comprehensive Regional Assistance Centers, currently codified at 20 U.S.C. § 8622. *Id.* H.R. 2 contains no specific new provisions regarding tribal education departments.

H.R. 2 has been referred to the House Committee on Education and the Workforce, 145 Cong. Rec. H641-02 (1999). On September 23, 1999, Representative Pitts (R-PA), introduced H.R. Res. 303, 106th Cong. (1999), a resolution expressing the sense of the House of Representatives on H.R. 2 to the Committee on Education and the Workforce. 145 Cong. Rec. H8627-03 (1999).

3. Public Law No. 105-277 and H.R. 2614, the Reading Excellence Act of 1997

On October 21, 1998, President Clinton signed into law Pub. L. No. 105-277, 112 Stat. 2681 (1998), which includes the Reading Excellence Act. 144 Cong. Rec. D 1202-04 (1998). The Reading Excellence Act is intended to improve reading skills through a variety of activities, especially by improved teaching methods based on research and phonics. H.R. Rep. No. 105-836 (1998).

The Reading Excellence Act was introduced into the House of Representatives on October 6, 1997, by Representative Goodling (R-PA), as H.R. 2614, 105th Cong. (1997). 143 Cong. Rec. H8437-03 (1997). The original version of the Reading Excellence Act would have eliminated many of the Indian Education Act programs, including the authorization for tribal education department funding through the Department of Education currently codified at 20 U.S.C. § 7835. H.R. Rep. No. 105-348 (1997).

The original version of H.R. 2614 passed the House on November 8, 1997 and the Senate on April 23, 1998 as an amendment to H.R. 2646, 105th Cong. (1997), the A+ Education Savings Account Act; 143 Cong. Rec. H10386-05 (1997); 143 Cong. Rec. S12290-01 (1997); 144 Cong. Rec. D394-02 (1998). This version of H.R. 2614 / H.R. 2646 was vetoed by President Clinton on July 21, 1998. 144 Cong. Rec. H6052-01 (1998); 144 Cong. Rec. D803-01 (1998).

Meanwhile, on October 6, 1998, the Senate passed H.R. 2614 as amended. 144 Cong. Rec. D1104-02 (1998); 144 Cong. Rec. H9725-06 (1998); 144 Cong. Rec. S11533-03 (1998). This version of H.R. 2614 did not propose to eliminate the Indian Education Act programs, including the authorization for tribal education department funding through the Department of Education currently codified at 20 U.S.C. § 7835. S. Rep. No. 105-208 (1998). This version of H.R. 2614 passed the House of Representatives as part of H.R. 4328, 105th Cong. (1998), a bill making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1999 and for other purposes. H.R. Rep. No. 105-836 (1998).

4. The Department of the Interior and Related Agencies Appropriations Bill, 1996

One reason that Congress has not appropriated funding for tribal education departments is that the President does not ask for such funding in his annual budget request to Congress. And, the President does not include such requests in large part because the Department of the Interior and the Department of Education do not ask the President to include the

requests.

Indeed, only once has any federal agency ever specifically requested tribal education department funding. In 1995, the BIA asked the President to request \$500,000 for tribal education department funding through the Department of the Interior authorization currently codified at 25 U.S.C. § 2024. Testimony of the NIEA before the Senate Committee on Indian Affairs on President Clinton's FY 1996 Budget Request, 1995 WL 64803 (F.D.C.H. Feb. 16, 1995).

When Congress reviewed H.R. 1777, 104th Cong. (1995), the President's proposed Department of the Interior fiscal year 1996 appropriations budget bill, the House of Representatives, but not the Senate, was in favor of tribal education department funding. S. Rep. No. 104-125 (1995); H.R. Rep. No. 104-173 (1995).

The House Committee on Appropriations recommended "\$500,000 for tribal departments of education." H.R. Rep. No. 104-173 (1995). The Senate Committee on Appropriations, however, "provided no funding for tribal departments of education" due to "funding constraints [which] prohibit initiating funding for an activity that is expected to have significant out-year costs." S. Rep. No. 104-125 (1995).

5. **Testimonies by Indian Organizations before Congressional Committees**

Since at least 1989, organizations such as NARF and NIEA have testified regularly before congressional substantive and appropriations committees in support of funding for tribal education departments. The following are excerpts from the testimonies of Indian organizations in 1999.

- a. Statement of Faye BlueEyes, Director of Facilities, Shiprock Alternative Schools, before the House of Representatives Subcommittee on Early Childhood, Youth and Families on Education Programs for Native Americans, 1999 WL 519009 (F.D.C.H. July 20, 1999):

It is vital that this Committee support the development of tribal departments of education, both through the authorizing legislation and through direct efforts to provide sufficient funding to these entities. This is particularly important on the Navajo Reservation, where 65 of the BIA-funded schools are located. As you know, several schools at Navajo and on other reservations convert from BIA operation to tribal operation each year. A vibrant, well-funded tribal department of education can play a critical role in training new tribal school board members to take over direct operations, help them recruit highly qualified administrative staff, develop good financial management systems, and provide trouble-shooting assistance and on-going monitoring, particularly over the first few years of local operation. This role must be performed by the tribe

involved, as the tribe is most heavily invested in the success of the exercise of its self-determination rights.

In addition, as a "veteran" of a tribally operated school, I know that a school board and its administrative staff must work continuously to assure that we comply with all federal standards, including audit standards, to be accountable to the federal and tribal governments and to the parents of our students, and to generally do things right. Achieving this goal requires diligent and knowledgeable board members and administrators; but it is not fully achieved overnight. Hands-on attention from a tribal department of education can go a long way in making local school operations successful.

- b. Statement of the NIEA before the Senate Committee on Health, Education, Labor and Pensions on the Reauthorization of the Elementary and Secondary Education Act, 1999 WL 382018 (F.D.C.H. June 10, 1999):

The Tribal Departments of Education authority has been in existence for four years and has never been recommended for funding within the Department of Education budget hierarchy. Since its authorization NIEA has advocated for at least \$3 million to assist tribes in developing their education department infrastructures. As tribes move toward more local control over education programs, they will need the ability to manage and design programs that align with tribal codes and state / national assessment criteria. The Bureau of Indian Affairs has a similar authority, but it has never been funded, except for one \$ 100,000 grant to the Mississippi Choctaw Indian Nation several years ago. Although no funding is provided in the President's FY2000 BIA education budget, NIEA has recommended \$3 million for tribal departments of education. We believe that sufficient funding should be provided to assist tribes in planning and developing their own centralized tribal administrative entities to accomplish their goals in accordance with school reform and accreditation needs. Whether this is accomplished through the Department of Education or Interior is irrelevant given the fact that both agencies would need to be involved to ensure accountability. This would be appropriate given the recent trend to convert more schools from BIA to Tribal control. Funding for tribal education departments has been endorsed by NIEA's membership as well as by the National Congress of American Indians (NCAI) which represents over 250 tribes.

NIEA's testimony continued, with respect to the Executive Order No. 13,096, 63 Fed. Reg. 42681 (1998), that funding for tribal education departments is critical to

implementation of the Executive Order.

By creating a more stable tribal structure, the tribes could more readily collaborate with the SEAs [State Educational Agencies] and the LEAs [Local Educational Agencies] as directed in the E[xecutive] O[rder]. By all accounts, the Department of Education has historically opposed this provision arguing that this should be the responsibility of the Bureau of Indian Affairs. NIEA believes both agencies need a hand in ensuring Tribal Departments of Education succeed. One for the role of tribal governance and one for the needs of the Indian learner. What better example could there be of federal agency coordination than that envisioned by Tribal Departments of Education?

Statement of the NIEA before the Senate Health, Education, Labor and Pensions Committee on the Reauthorization of the Elementary and Secondary Education Act, 1999 WL 382018 (F.D.C.H. June 10, 1999); *see also* Statement of the NIEA before the House of Representatives Subcommittee on Early Childhood, Youth and Families on Education Programs for Native Americans, 1999 WL 519009 (F.D.C.H. July 20, 1999).

- c. Statement of NARF on behalf of the Rosebud Sioux Tribe, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, the Northern Cheyenne Tribe, the Three Affiliated Tribes of the Fort Berthold Indian Reservation, and the Jicarilla Apache Tribe before the Senate Committee on Health, Education, Labor and Pensions on the Reauthorization of the Elementary and Secondary Education Act, 1999 WL 382022 (F.D. C.H. June 10, 1999).

The Native American Rights Fund (NARF), the national legal defense organization for American Indian and Alaska Native Tribes, is pleased to submit this statement on the Reauthorization of the Elementary and Secondary Education Act. The statement is limited to our views on a single but very important issue — tribal education departments. We are particularly concerned that tribal education departments have never received federal appropriations. And, Title IX, Section 911 of S. 1180, the proposed Educational Excellence for All Children Act of 1999, seeks to eliminate an appropriation authorization. For over a decade NARF has represented tribes who have worked very hard to improve Indian education by establishing and maintaining tribal education departments. Our experience teaches that the authorization should be retained and that funding for the departments should be provided.

The federal responsibility in Indian education is grounded in the government-to-government relationship between the United States

and Indian tribes. This relationship is recognized in the Constitution and in many treaties, federal statutes, administrative orders, and court decisions. A recent manifestation of the relationship is the recognition of the role of tribal governments in improving Indian education. This role is increasingly being carried out by tribal education departments in partnership with schools, educators, and parents.

Since 1988 Congress has recognized tribal education departments. Almost a dozen federal statutes now have provisions on tribal education departments. They acknowledge the contributions of tribal education departments along with those of state education departments in establishing education and accreditation standards, developing and disseminating education research and technology, coordinating and improving education programs, and interacting with non-tribal agencies and schools.

Two separate provisions authorize tribal education department funding. The Improving America's Schools Act of 1994, Pub. L. No. 103-382 (codified at 20 U.S.C. § 7835), establishes authority for the Department of Education to fund tribal education departments. No appropriations ever have been made under this provision, which the Administration now proposes to eliminate. The School Improvement Amendments of 1988, Pub. L. No. 100-297 (codified at 25 U.S.C. § 2024), establish authority for the Bureau of Indian Affairs to fund tribal education departments. No appropriations ever have been made under this provision, either. This is a serious failure on the part of the federal government. At present, about one in six tribes (almost one hundred of the over 550 tribes) has an education department. These departments serve hundreds of thousands of tribal students every day. They administer scholarships, supervise programs, and develop curricula and teacher training. They provide leadership and advocacy for schools, educators, and parents. They foster working cooperative agreements among tribal, federal, and state agencies, schools, and programs.

Most importantly, tribal education departments are successfully addressing core problems in Indian education such as disproportionately high absenteeism and low educational attainment levels. The Carnegie Corporation of New York recently funded the first external evaluation of a tribal education department. The evaluation found that in the last ten years the drop out rates for tribal secondary students on the Rosebud Sioux Indian Reservation in South Dakota have decreased by thirty per

cent, and graduation rates have increased by fifty percent. The evaluation credits the Truancy Intervention Program administered by the Rosebud Sioux Tribal Education Department with this substantial progress. This progress is unprecedented; we know of no federal or state program that shows comparable results.

The Rosebud Sioux Tribe is one of five NARF tribal education department clients. Our other clients — in states from Montana to New Mexico — are similarly focusing on keeping Indian students in school and improving their performance there. Indian education occurs in a complex environment of services provided by tribal, federal, and state governments. The tribal education departments are rapidly rising to the challenge of being in the best overall position to track and report on tribal students, to identify and coordinate resources, and to provide technical assistance and accountability. In short, tribal education departments are effectuating the many good recommendations about how to improve Indian education that have been made over the years but never have been implemented.

Tribal education departments operate primarily with non-federal dollars such as economic development and tax revenues. But not all tribes have such resources, and even those that do could benefit from supplemental federal funding. For years the Rosebud Sioux Tribe has testified that Congress should at least match its average annual appropriation for its education department, which is about \$76,000. The National Indian Education Association and the National Congress of American Indians also consistently have testified in favor of tribal education department appropriations. They know that with federal dollars, tribes could do so much more to meet the educational needs of their students.

In the wake of demonstrated effectiveness, this is a crucial time for tribal education departments. Their fledgling but fruitful efforts should not be hindered. We are aware that the President's Fiscal Year 2000 Budget Request does not ask for tribal education department funding. We nevertheless ask Congress to take the important first step in retaining the ESEA tribal education department funding authorization. We also ask that critical appropriations in the amount of \$3 million be made. Such federal funding would help more tribes improve the educational opportunities and the quality of education for many more tribal students nationwide.

NOTES

THE NATIVE AMERICAN RIGHTS FUND**INDIAN EDUCATION LEGAL SUPPORT PROJECT****Federal and State Laws regarding Tribal Education Departments
1984-1999****State Law Provisions regarding Tribal Education Departments**

To date only one state has legislation specifically mentioning tribal education departments. In 1995, Wisconsin enacted a statutory American Indian Language and Culture Education Program, which is codified at Wis. Stat. Ann. §§ 115-71 to 115-75.

This program encourages school districts with Native American students to establish American Indian language and culture programs as part of the regular education curriculum. Wis. Stat. Ann. § 115.72. Where such programs are established, a parent advisory committee must also be established to advise the school board of the committee's views of the program. *Id.* § 115-735.

Wisconsin law provides that, "If there is a local tribal education authority, the school board shall appoint committee members from recommendations submitted by the authority," and "[t]he committee shall be composed of parents or guardians of American Indian pupils enrolled in the program, teachers, aides and counselors involved in the program and representatives of local tribal educational authorities" Wis. Stat. Ann. §§ 115.735(1) - (2).

Wisconsin law also defines "Tribal educational authority" to include "a tribal department or division of education...." Wis. Stat. Ann. § 115.71(5).

STATEMENT OF THE NATIVE AMERICAN RIGHTS FUND
on behalf of the Rosebud Sioux Tribe,
the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation,
the Northern Cheyenne Tribe, the Three Affiliated Tribes
of the Fort Berthold Indian Reservation, and
the Jicarilla Apache Tribe

Submitted to the
SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

on the
REAUTHORIZATION OF THE
ELEMENTARY AND SECONDARY EDUCATION ACT

Native American Rights Fund
1506 Broadway
Boulder, CO 80302
(303) 447-8760
www.narf.org

June 10, 1999

STATEMENT OF THE NATIVE AMERICAN RIGHTS FUND
 submitted to the
SENATE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS
 on the
REAUTHORIZATION OF THE
ELEMENTARY AND SECONDARY EDUCATION ACT
June 10, 1999

The Native American Rights Fund (NARF), the national legal defense organization for American Indian and Alaska Native Tribes, is pleased to submit this statement on the Reauthorization of the Elementary and Secondary Education Act. The statement is limited to our views on a single but very important issue — tribal education departments. We are particularly concerned that tribal education departments have never received federal appropriations. And, Title IX, Section 911 of S. 1180, the proposed Educational Excellence for All Children Act of 1999, seeks to eliminate an appropriation authorization. For over a decade NARF has represented tribes who have worked very hard to improve Indian education by establishing and maintaining tribal education departments. Our experience teaches that the authorization should be retained and that funding for the departments should be provided.

The federal responsibility in Indian education is grounded in the government-to-government relationship between the United States and Indian tribes. This relationship is recognized in the Constitution and in many treaties, federal statutes, administrative orders, and court decisions. A recent manifestation of the relationship is the recognition of the role of tribal governments in improving Indian education. This role is increasingly being carried out by tribal education departments in partnership with schools, educators, and parents.

Since 1988 Congress has recognized tribal education departments. Almost a dozen federal statutes now have provisions on tribal education departments. They acknowledge the contributions of tribal education departments along with those of state education departments in establishing education and accreditation standards, developing and disseminating education research and technology, coordinating and improving education programs, and interacting with non-tribal agencies and schools.

Two separate provisions authorize tribal education department funding. The Improving America's Schools Act of 1994, Pub. L. 103-382 (codified at 20 U.S.C. § 7835), establishes authority for the Department of Education to fund tribal education departments. No appropriations ever have been made under this provision, which the Administration now proposes to eliminate. The School Improvement Amendments of 1988, Pub. L. 100-297 (codified at 25 U.S.C. § 2024), establish authority for the Bureau of Indian Affairs to fund tribal education departments. No appropriations ever have been made under this provision, either.

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HARVARD
UNIVERSITY



JOHN F. KENNEDY
SCHOOL OF GOVERNMENT

The Harvard Project on American Indian Economic Development
John F. Kennedy School of Government
79 / F K Street, Cambridge, MA 02138
tel. (617) 496-6632 fax. (617) 496-3900

Sherry Red Owl
Director, Rosebud Sioux Tribe Education Dept.
PO Box 430
Rosebud, SD 57570

April 30, 1999

Dear Ms. Red Owl:

It gives me great pleasure to inform you that Rosebud Sioux's Tribal Education Department and Code (#SD2) was selected as a semifinalist for the inaugural year of *Honoring Contributions in the Governance of American Indian Nations (Honoring Nations)*. Congratulations!

Your application was reviewed carefully by the senior management of the Harvard Project, who evaluated applications on the basis of the contribution's effectiveness, significance, transferability, creativity, and sustainability. We were impressed with your nation's application and unanimously agreed that your contribution should advance to the next round of evaluation. I am also pleased to report that the quality of the applications for this year's awards was extremely high and we received over sixty applications representing Indian nations from more than twenty states.

In upcoming weeks, I will contact you to request some additional information about your contribution. This additional information, which you will have several weeks to compile, will further assist *Honoring Nations* evaluators as they select sixteen finalists from the semifinalist pool in the months of June and July. If your contribution is selected as a finalist, your nation will receive a site visit in the late summer, and you will be invited to make a presentation to the *Honoring Nations* Advisory Board on October 6, 1999 in Palm Springs, California. This one-day event, which coincides with the National Congress of American Indians' annual meeting, is also where "high honors" will be awarded and publicly celebrated.

Once again, congratulations on the selection of your nation's contribution as an *Honoring Nations* semifinalist for 1999.

With warm regards and best wishes for continued success in your nation's education department.

Sincerely,

Andrew J. Lee
Executive Director for Programs

**EXTERNAL EVALUATION
FINAL REPORT**

ROSEBUD SIOUX

**TRIBAL EDUCATION DEPARTMENT
&
TRIBAL EDUCATION CODE**

Submitted To:

**Rosebud Sioux Tribe
Box 430
Rosebud, South Dakota 57570
&
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302-6296**

Submitted By:

**RJS & Associates, Inc.
RR 1, Box 694
Box Elder, Montana 59521
Phone: (406) 395-4757
Fax: (406) 395-4759
E-mail: rjsinc@rjsinc.org**

April 1999

This evaluation was supported in part by a grant from the Carnegie Corporation of New York. The Carnegie Corporation, however, does not take any responsibility for any statement or views expressed herein.

I. INTRODUCTION

To improve the quality of education and educational opportunities for tribal students, the Rosebud Sioux Tribe (**RST**) established a Tribal Education Department (**TED**) in 1990 and enacted a Tribal Education Code (Code) in 1991. The Native American Rights Fund (**NARF**) assisted the **RST** in these efforts. This evaluation assesses the **TED** and its Code implementation efforts to date. The evaluation is intended to help gauge whether and how the **RST** has improved education for tribal students; what guidance and revisions the **TED** and Code need; and whether **NARF** and the Carnegie Corporation will continue to support future such tribal education reform efforts.

Although tribal assertion of sovereign regulatory authority over education is still in its infancy and no assessment models or standards exist, this evaluation has ascertained the initial progress and problems of the **RST's** precedent-setting attempt. In so doing, this evaluation:

- ◆ describes the history and current picture of education on the **RST's** Reservation (Reservation) and the advent of the **TED** and the Code as the means to improve Reservation education;
- ◆ sets forth findings regarding the **TED** and the Code's impact on Reservation education; and
- ◆ presents recommendations for improving the effectiveness of the **TED** and its Code implementation.

The evaluation was conducted during the summer and fall of 1998 with this Final Report presented to the **RST** and **NARF** in April 1999. This is the first-ever independent and formal assessment of a tribal education department and tribal education code. While there are other tribal education departments, their responsibilities differ markedly from those of the **RST** or their Code implementation is not as far along as that of the **RST**. The **RST's** efforts to impact positively the course of education for tribal students and this evaluation of those efforts thus both mark firsts in this area of tribalizing Indian education.

The problems in Indian education are well-documented. This and the unprecedented nature of the **TED** and Code — tribal government involvement, coordination, and regulation — make this evaluation of great interest and significance to other tribes and non-tribal governments. Throughout the evaluation, "lessons learned" are offered to help tribal and non-tribal governments and other interested parties determine whether tribal education departments and codes are viable means of improving Indian education.

II. EXECUTIVE SUMMARY

Major Findings

- ▶ The **RST** established a **TED** whose operations are funded primarily by tribal revenues and whose leadership efforts are widely recognized by tribal and non-tribal governments, schools, officials, parents, and students
- ▶ The **RST** enacted the Code and the **TED** is implementing the Code and other tribal education initiatives on the Reservation primarily through cooperative and collaborative efforts
- ▶ Since the **TED** was established and the Code was enacted, the drop-out rates for grades nine through twelve in the tribal and public schools serving tribal students have declined substantially
- ▶ Since the **TED** was established and the Code was enacted, the graduation rates for grades nine through twelve in the tribal and public schools serving tribal students have increased substantially
- ▶ Since the **TED** was established and the Code was enacted, little progress has been made regarding tribal student academic achievement levels

Major Recommendations

- ▶ Funding and staffing for the **TED** should be increased to accelerate Code implementation
- ▶ Issues of legal jurisdiction among the tribal, state, and federal governments over Indian education should be clarified to facilitate the **TED's** Code implementation efforts and protect the **RST** in the event that collaboration breaks down
- ▶ For direction and accountability, the **TED** should develop and follow a long-range operations plan with goals and performance measures
- ▶ The **RST's** efforts in improving educational opportunities for tribal students by reducing their drop-out rates and increasing their attendance and graduation rates should be expanded into areas of student educational attainment and academic achievement levels
- ▶ For future external monitoring and assessment, models, standards, and analyses for tribal education departments and codes should be developed, reviewed, and refined

III. EVALUATION PROCEDURES - BACKGROUND AND CHALLENGES

With funding from the Carnegie Corporation, **NARF** contracted with **RJS & Associates, Inc. (RJS)** for this evaluation. The major questions driving the evaluation were:

- ◆ What are the strengths and weaknesses of the Code itself?
- ◆ How well has the **TED** done at implementing the Code?
- ◆ What impact have the Code, its implementation, and the **TED** had upon the education of tribal students on and near the Reservation?

As noted in the Introduction, this is a "first-of-its-kind" evaluation in an area of great importance to tribes and Indian education. The evaluation techniques are novel as well. In preparing for and effectuating this evaluation, **RJS** has had to rethink many of its traditional evaluation methods and use options that are tailored to the **TED** and the Code.

In reviewing the Code and **TED**, **RJS** encountered a cutting-edge tribal regulatory and operational framework. We are aware that some other tribes have followed the **RST's** lead in developing tribal education codes, but none have done so by the same process as the **RST**, and none are implementing codes as comprehensive as that of the **RST**. Additionally, the **RST's** education improvement efforts often include initiatives and collaboration that are not conducive to documentation.

As such, **RJS** had to plow new ground and design data gathering and analysis procedures that fit this unique legal and educational structure and situation. Since no other tribe has tried a regulatory effort like this, **RJS** considered comparing the **RST's** efforts to those of a state or states. But unlike tribes, the existence of state regulatory authority over education is well-established and accepted. State authority is typically questioned only in instances of specific application (*e.g.*, challenges to a negative state audit or accreditation report). Hence, no positive models were available there, either.

RJS therefore focused its assessment on data and information that was available or could be readily gathered on the Reservation within the time-frame of this evaluation. **RJS** also relied on its extensive experience in Indian education and knowledge of federal Indian policy and tribal governments. The data and information was then compiled and analyzed without the benefit of comparison to existing models, standards, or analyses for a tribal education department or tribal education code.

Ultimately, **RJS** was able to identify and evaluate information provided by schools and other educational institutions that linked the **TED** and Code-related action to measurable impacts on and progress for tribal students. This is shown in the improved student attendance and graduation rates and decreased drop-out rates at the tribal and public schools that worked with the **TED** on Code implementation.

IV. DESCRIPTION OF THE TRIBAL EDUCATION DEPARTMENT AND CODE

A. Geographics and Demographics of the Rosebud Sioux Tribe and Reservation

The Treaty of Fort Laramie in 1868 between the **RST** and the United States provided for a 3.2 million acre reservation for the **RST**. Acts of Congress in the early 1900s substantially reduced these treaty-reserved land holdings. The Acts also have been held by the United States Supreme Court to have disestablished the original Reservation boundaries. *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977).

Today, the Reservation boundaries are contiguous with Todd County, a political entity of the State of South Dakota. The Reservation and / or Todd County encompasses 1,388 square miles or 958,000 acres. About 580,000 acres (60%) is held in trust by the federal government for the **RST** or tribal members. The remaining acreage is held primarily in fee simple by Indians, non-Indians, and the state and federal governments. An additional 500,000 acres of Indian trust land are located outside Todd County but within the original boundaries of the Reservation.

The total population of the **RST** is over 31,000, making it among the largest five tribes in the United States. Over 18,000 tribal members live on the Reservation or on Indian trust lands within the original Reservation boundaries. The total population of Todd County is over 15,000, about eighty percent of whom are Indian.

The checkerboard land holdings and mixed population present situations of concurrent and often overlapping jurisdiction among the tribal, federal, and state governments generally, and especially with respect to education.

B. History of the Governance of Reservation Education

1. Pre-European / American Contact: Traditional Lakota Ways

Historically, the **RST** had total responsibility for educating tribal members and improving their livelihood. Primarily through the extended family system, all children were given daily and continuing instruction in survival skills, living in harmony with other people and nature, spiritual values, and family kinship and tribal relationships. Some children received special healing, spiritual, and leadership training from adults and elders. These education processes and content were effective as evidenced by the **RST's** thriving culture and economy before contact with non-Indians.

2. The Treaty and Allotment Eras: Federal and Religious Schools

By the 1800s, the growing non-Indian population threatened tribal traditions. In treaties with the United States, the **RST** and many other tribes were forced to cede land

to the United States in exchange for, among other things, schools, teachers, and educational materials. Throughout the 1870s, 1880s, and 1890s, tribal students were required to attend federal boarding schools located on and off the Reservation or parochial schools — Episcopalian, Jesuit, and Franciscan— which received federal land grants and funding to locate and operate on the Reservation.

By 1880, the prevailing federal policy was to “civilize” Indians and assimilate them into American society. This was accomplished largely by breaking up tribal reservations into individual Indian landholdings called “allotments.” It was also accomplished through education. The boarding schools were operated similarly to United States military academies. The parochial schools were dominated by Euro-Christian religious instruction. Both systems stressed vocational training and Anglo-American values. They actively and harshly sought to eliminate tribal languages, cultures, and spirituality. Historical and contemporary reports and studies widely acknowledge that these education efforts left many Indian students physically and emotionally damaged.

3. The Reorganization and Termination Periods: Public Schools

In the 1920s and 1930s, the federal policies of allotment and assimilation were abandoned. Instead, federal Indian policy generally recognized and encouraged tribal governments and land bases. With respect to Indian education, however, responsibility was largely transferred to the now predominant state public school systems which Indians were required to attend. Only a few federal Indian boarding and day schools remained. Public schools throughout the country contracted for federal funding to educate Indians. Public school curricula were uniformly Anglo-American, regardless of the tribal student population.

In the 1950s, federal Indian policy shifted again, this time to “terminating” the government-to-government relationship between the United States and tribes. Termination was an effort to reduce the federal role in Indian affairs and to acculturate Indians into mainstream American society. Thus, federal Indian education policy continued to emphasize public schools. When the public schools lobbied for increased federal funding, the Impact Aid Laws, Public Laws 81-874 and 81-815, were amended to add Indian lands to the federal lands for which subsidies are provided because they are exempt from state taxation. On the **RST's** Reservation, the few remaining federal Indian schools were transferred to public school systems that became large recipients of Impact Aid funding. Research and reports, however, were beginning to question the suitability of public school education for tribal Indians.

4. The Self-Determination Years: Indian Education Programs, Contract Schools, and Tribal Colleges

The 1970s brought yet another federal policy — Indian self-determination. A major component of the self-determination policy was educational assistance to and control of education by Indians. Existing federally-funded education programs were expanded to

include tribes as grantees. New federally-funded programs were established, some of which were based on the unique cultural and academic needs of Indians and the unique political status of tribes. Tribes could contract for the funding and operation of schools and education programs formerly administered by the federal government. In 1978, federal law recognized and funded tribal colleges.

The **RST** actively reaped the self-determination education benefits. The **RST** already operated a large Head Start Program. Now, funding for and operation of other programs and schools were sought. The **RST** contracted the St. Francis Indian School as well as the administration of Johnson O'Malley Indian education funding and higher education scholarships. Sinte Gleska University (**SGU**), the **RST's** college, was founded in 1971. In 1980, **SGU** was the first tribal college in the country accredited as a four-year college, and in 1988, it was the first tribal university accredited to award up to masters degrees in education.

5. Tribal Education Law and Policy

In the 1980s, tribes furthered the federal self-determination policy into a growing tribal sovereignty movement. For the **RST**, a critical component of its self-determination and sovereignty was Indian education. In 1980, a Tribal Education Committee (**TEC**) was established by tribal law as a standing committee of the Tribal Council, the legislative branch of the tribal government. The **TEC** was charged with establishing a tribal education department and developing a tribal education code.

The **TEC** examined in-depth the whole picture of Reservation education, from the success of **SGU** to the disappointing drop-out rates and achievement levels in elementary and secondary schools. It was apparent to the **TEC** that Reservation education had become fragmented. Various providers, entities, and programs offered tribal students different education curricula, teaching methodology, and goals. By the late 1980s, the **TEC** had definite ideas about the role that tribal government and sovereign regulation could play in coordinating and improving Reservation education.

C. Background on the Tribal Education Department and the Code

In 1987, the **RST** requested **NARF's** legal assistance in establishing its education department and developing its education code. **NARF** accepted the request and in 1988, provided a legal opinion on the **RST's** authority to regulate all aspects of education within the **RST's** territory. While generally supportive of tribal authority, **NARF** cautioned: 1) about the many legal complexities and uncertainties associated with tribal governmental and territorial jurisdiction in Indian education; 2) that few, if any, models of tribal education departments and codes existed; and 3) that federal resources available to support tribal education departments and codes were scarce.

Research and planning by the **TEC** and **NARF** nevertheless proceeded. They

agreed that the Code could supplement existing federal and state law and policy, particularly in the areas where the **RST** viewed non-tribal law and policy as not meeting the needs of tribal students. By 1989, the **TEC** had approved a draft code for review and comment by tribal and non-tribal schools, other educational institutions, officials, and parents. In 1990, the Tribal Council appropriated \$30,000 to hire a Tribal Education Director. The extensive Code review and revision process was completed, public hearings were held, and the Tribal Education Code was enacted into law in October 1991.

D. Overview of the Tribal Education Department and the Code

1. The Department

The Code establishes the **TED** as an agency of the tribal government. The **TED** is charged generally with administering and enforcing the Code. The **TED** must report regularly to the Tribal Council, which is the governing and policy determining body for the **TED**. **TED** reporting must include an annual State of the Reservation Education Report (**SRE**). The **SRE** must include data on Code compliance by schools and other educational institutions and on student performance and needs. The **TED** also must act as a liaison among tribal government, schools and educational institutions, and parents and students, and must advocate for tribal education with the federal and state governments.

Since it was established, the **TED** has had two staff positions. Originally, there was a Director and a Secretary / Administrative Assistant. Presently, the Secretary / Administrative Assistant position has been replaced by a Lakota Language Specialist. The two positions have always been funded by tribal revenues.

Since established, the **TED** has had the same Director, Sherry Dawn Red Owl. At present, eleven other positions are associated with the **TED** and supervised by the Director. These include Truancy Intervention Officers and Parenting Education Specialists. While not required by the Code, these positions have resulted from the **TED's** establishment and they address specific tribal education needs as well as the overall goals of the Code.

2. The Code

The Code regulates all schools and education programs on the Reservation — tribal, federally-funded, and state. The schools and education programs are expected to comply with the Code and report their compliance to the **TED**. The major substantive areas of Code regulation are curriculum and education standards, parental and community involvement, alcohol and substance abuse education, and staffing and teacher training. The **TED** is to develop or oversee the development of tribal programs in these areas.

The substantive areas are intended to be the primary means by which the **RST** addresses and improves student performance. In short, the Code reflects the view of the

RST that tribal curricula, particularly language and cultural curricula, parental involvement, and Indian teachers will help more students stay in school longer and perform better. The Code also reflects the **RST's** view that the **TED** is in a unique position to coordinate the various Reservation education resources and focus on specific and long-term Reservation education problems and progress.

The Code asserts the **RST's** sovereign authority — as recognized by federal law — over the education of tribal members concurrently with applicable law of the State of South Dakota. The Code provides that compliance by the public schools with substantive tribal regulation such as tribal curricula will be enforced and evaluated jointly by the **TED** and the State. However, to the extent that the Code conflicts with state law, the Code provides that the Code, not state law, shall govern. To date the legal authority and scheme of the Code have not been conclusively resolved or even tested in any judicial forum. Rather, collaborative efforts have been used to accomplish Code implementation.

3. Tribal Education Initiatives

The **TED** has developed or assisted in the development of several initiatives that are driven by specific needs and problems in Reservation education and within the goals of the Code. By the time the Code was enacted, truancy in both public and tribal schools had reached a crisis level. The **RST** had a compulsory school attendance law, but no agency to enforce the law. In FY 1994, the **TED** designed a Truancy Intervention Project (**TIP**) and secured appropriations from the **RST's** federal funds for general tribal government operations to implement the **TIP**.

In another area, the Code requires schools and other educational institutions to provide instruction in Lakota language. Some schools, however, were uncomfortable developing Lakota language courses without significant tribal participation. The **TED** created a Lakota Language Renewal Project (Lakota Wowaglakka Wounspe) within the **TED**. This Project provides technical assistance to schools and other educational institutions in Lakota language instructional content, methodology, and assessment. The Project also conducts Lakota Language Immersion Programs in tribal communities to assist families in restoring the Lakota language to primary usage. The Immersion Programs then provide reinforcement to instruction in schools and other educational institutions.

The Individuals with Disabilities Education Act (IDEA), Public Law 91-230, places shared responsibility for services to infants and toddlers with disabilities on states and tribes. Tribes may identify, diagnose, and provide prevention and early intervention services to infants and toddlers with disabilities and direct services to their families. Early identification and intervention services have proved beneficial in transitioning these children into formal education settings. When the Code was enacted, the **RST** had no agency to provide these services. The **TED** designed a Tribal IDEA program which collaborates with non-tribal agencies and schools. The **TED** manages the program,

including a Tribal Parenting Education Program component that focuses on prevention of disabilities and early childhood development training for families.

V. DESCRIPTION OF ELEMENTARY AND SECONDARY SCHOOLS SERVING TRIBAL STUDENTS

A. Todd County Public School District

The boundaries of the Reservation are contiguous with those of Todd County and the Todd County School District. The District is governed by a five-member school board and consists of eight elementary schools, one middle school, and one high school. The composition of the elementary schools ranges from 100% Indian to 100% non-Indian.

Todd County is the largest single provider of education on the Reservation. About sixty percent of tribal elementary and secondary age students are enrolled in Todd County. In 1998-1999, the total enrollment in Todd County schools is 2,126. About ninety percent of these students are Indian.

Todd County's total operating budget is about \$12 million. The significant categories of federal funding to Todd County include Impact Aid, Johnson O'Malley, Title I, Title VII, Title IX, and 21st Century Community Learning Centers. In 1992, Todd County hired the first Indian Superintendent of any public school district in South Dakota. Dr. Richard Bordeaux still serves as Superintendent and is an enrolled member of the RST.

B. St. Francis Indian School

In 1970, the RST contracted the operation of this former parochial school, and has maintained it since as a kindergarten through grade twelve tribal school. The RST charts the governance of St. Francis to an Indian parent corporation, Sicangu Oyate Ho, Inc., which in turn elects an eight-member school board. In 1998-1999, enrollment at St. Francis is 680 students. About ninety-nine percent of the students are Indian.

St. Francis presently receives about \$4.3 million in annual federal funding. In 1990, St. Francis was elevated under new federal law from the status of contract school to grant school. As a grant school, St. Francis is eligible to receive its federal funding up-front and annually, rather than on a quarterly basis. It is also permitted to invest the funding and receive and use the interest on that investment. The current Chief Executive Officer (and all past CEOs) of St. Francis is an enrolled RST member.

C. White River Public School District

White River School District is located in the northwest portion of the territory within the original Reservation boundaries. After Todd County and St. Francis, White River is the

largest provider of elementary and secondary education for tribal students. In 1997-1998, total student enrollment in White River schools was 445. Of these, 336 (75%) were tribal members. At present, the annual operating budget for White River is \$4.1 million. The current Superintendent is an enrolled member of the Crow Creek Sioux Tribe.

D. Other Schools

Several other South Dakota public school districts located within or near the original Reservation boundaries serve tribal students. These include Winner, Bonesteel / Fairfax, Gregory, Wood, and Burke. Some tribal students attend public schools in the State of Nebraska, which is adjacent to the southern border of the Reservation. Many tribal students attend public schools in Rapid City, South Dakota. Other elementary or secondary schools located on the Reservation include Rosebud Christian School, White Eagle Academy, and the Grass Mountain Demonstration School. These schools are not included in this evaluation for various reasons, including: the small percentage of tribal students served by the schools, the infancy of the schools, or the minimal resources available to the **TED** to work with the schools.

VI. FINDINGS

A. Tribal Education Department

1. The RST has established and does fund and operate a TED

The **TED** was established in FY 1990. The Tribal Council has appropriated substantial tribal revenues to fund **TED** operations. Appropriations are based largely on the Director's proposed budgets and appropriations requests. In ten years, annual appropriations have ranged from \$30,000 to \$93,000. See Appendix. The average annual appropriation has been \$68,300. This is significant because direct federal funding for tribal education departments is non-existent and **RJS** knows of no other tribe that funds a tribal education department like the **RST's** from tribal revenues. However, the level of tribal funding is insufficient for the **TED** to implement the Code fully.

2. The TED Director understands the Code and directs its implementation

The **TED** was intentionally established before the Code was enacted so that the Director could be involved in reviewing and finalizing the Code. This chronology has proved extremely helpful to the Director's understanding of the Code. Since enactment, the Code has been implemented primarily under the direction of the Director, with minimal policy determination by the Tribal Council. A decade of the same person serving as Director has provided continuity and credibility.

3. The TED has consistently and increasingly obtained funding for tribal education needs and initiatives

In FY 1994, the TED succeeded in obtaining \$33,000 for the TIP from the RST's federal funding for tribal governmental operations. From FY 1994 to FY 1999, this funding continued at an average annual level of about \$83,300. See Appendix. Also in FY 1994, the TED succeeded in obtaining \$7,600 in federal funding under the IDEA for an Infants and Toddlers with Disabilities Program. This funding has continued annually and increased monumentally to its present level in FY 1999 of \$947,000. *Id.*

In FY 1995, the TED succeeded in obtaining \$250,000 from tribal gaming revenues for school clothing and scholarships. This earmarked funding has continued and it is presently also designated for the Lakota Language Renewal Project and the Rosebud Alternative Program (RAP), a grades seven through twelve alternative school operated jointly by the TED, St. Francis Indian School, and the Todd County School District. *Id.*

These initiatives are not directly provided for by the Code. They do address specific tribal education needs. They are consistent with the overall goals of the Code to improve educational opportunities for tribal students and link formal education with families and communities. However, they require a great deal of planning and coordination by the TED. As such, they increase the Director's work load and stretch thin the TED's resources. In some instances, the TED has been able to delegate or transfer oversight or operation of the initiatives after start-up.

4. The TED has implemented the Code reporting provisions with some difficulties

The TED does gather Code compliance information and other education data annually for the SRE Report. The Report, however, has not been regularly published due to lack of funding. This is detrimental because the SRE is the major Code compliance indicator and a guide for tribal education progress and needs. In general, the schools and other educational institutions have complied with the TED's requests for data and information, especially the Todd County School District, St. Francis Indian School, and the White River School District. The TED has recently encountered resistance from at least one public school district and the RST is reviewing this situation. In addition, the TED has struggled with record keeping definitions and procedures which are not standard from school to school and sometimes even within a school. Changing definitions and procedures is difficult. However, the need to obtain data in standard formats for accurate tracking and comparison is great.

The TED has established a computerized data base for a Tribal Student Tracking System. This useful and creative System follows individual tribal students in all schools and other educational institutions. The System provides helpful information for the TED regarding individual students and families, and assists in overall education planning,

coordination, reform, and advocacy. However, there is at present no effective means by which updates on or amendments to data from the schools and other educational institutions are timely and accurately transmitted to the TED.

5. Addressing unforeseen problems and "troubleshooting" take a large amount of TED resources

The TED has addressed several unforeseen problems and has had to "troubleshoot" other situations in Reservation education. These range from overseeing a two-year overhaul of a major program such as Tribal Head Start to resolving specific conflicts between federal agencies and tribal grantees over Indian education funds. This work has been largely successful, thus showing the TED's capabilities. However, the work also has added duties to the TED's small staff and decreased TED attention to Code implementation.

6. The TED has helped schools and other educational institutions to develop their own initiatives

The TED has helped develop and implement several initiatives that are operated by schools and other educational institutions. These include the Grass Mountain Demonstration School, the Freshman Academies, and the RAP. While not directly provided for in the Code, these initiatives relate to overall Code goals. In most instances, they require creative brainstorming and intensive up-front collaboration among the TED, schools, and other educational institutions.

7. The TED has become a recognized leader in Reservation education

Tribal and non-tribal governments, schools, officials, parents, and students accept and acknowledge the TED as a leader in Reservation education. Much of this recognition is due to Code implementation and initiatives which require coordination and collaboration with schools and other educational institutions. Some schools and other educational institutions now regularly include the TED in their planning, processes, and problem-solving. Recognition is also due to the Director's consistent attendance at meetings of schools and other educational institutions. The TED Director also serves on the South Dakota Congressional Youth Awards Council and at present is the Chairperson of the congressionally-mandated National Advisory Council on Indian Education. This broad recognition is critical to successful Code implementation.

8. TED and Code effectiveness are limited by entrenched attitudes and ways

Tribal and non-tribal governments, schools, and other educational institutions rely heavily on their existing staff and long-standing policies and procedures. The Code was

intended primarily to supplement, not replace, existing staff and policies and procedures. While there has been cooperation in Code implementation generally, there are also instances of resistance and adherence to the adage that "change occurs slowly."

9. The TED lacks an overall long-range plan

The **TED** does not have an overall long-range plan with performance measures. Such a plan would not solve matters such as limited resources, additional duties, and unforeseen problems. It would, however, help the **TED** implement the Code and prioritize its resources. It would also provide a basis for internal monitoring and accountability and for external evaluation.

B. The Tribal Education Code

1. The RST developed, enacted, and is starting to implement the Code

When the Code was being developed, there were no models of other tribal education codes. Since the Code has been enacted, a few other tribes have adopted education codes or plans. **RJS** knows of no other tribal education code that is as comprehensive or as far along in implementation as that of the **RST**.

2. The collaborative Code development process has facilitated Code implementation

The Code development process included a large network established by the **TEC** and **TED** of tribal and non-tribal officials, educators, and parents. The network provided input and communication. The **TEC** and **TED** hosted discussion and drafting sessions with schools and other educational institutions on key Code sections. Though time and resource consuming, this development process was intended to directly and extensively involve entities and individuals affected by the Code and help set the stage for cooperative and collaborative implementation work. This strategy has enabled implementation and helped to avoid disputes over the legal jurisdictional questions regarding Indian education.

3. Most schools and other educational institutions have complied with Code reporting requirements

A major feature of the Code is its reporting requirements, particularly with respect to data on student performance, progress, and needs. Since the Code's inception, most schools and other educational institutions have furnished the requisite data and information to the **TED**. The data initially provided have become the baselines for improvement. For some schools and years, data is incomplete. Lack of regular data provision or incomplete data hinders the **TED's** reporting and tracking efforts.

4. Legal jurisdictional questions have hindered implementation of certain Code sections

The **RST** was apprised of the legal complexities and uncertainties surrounding governmental jurisdiction over Indian education. The Code was designed to be implemented in a cooperative and collaborative manner guided by an overall respect for mutual goals of improving the quality of education and educational opportunities for tribal students. Cooperative and collaborative implementation has proved successful and may be the best means of future implementation.

In some instances, however, the lack of legal clarity has hindered timely, full, or effective implementation of certain Code sections such as reporting and tribal curricula. Judicial enforcement of any Code sections against non-members of the **RST** has not been attempted. Resolution of the jurisdictional questions in favor of tribal authority would help Code implementation generally and in the event that cooperation or collaboration break down.

5. The Code lacks prioritization within itself

The Code does not prioritize its provisions. For example, the Code does not direct the **TED** about which of its substantive areas — for example, reporting, tribal curricula, or parental involvement — is the most important, or in what order they should be addressed. Nor should the Code so prioritize, for that likely would be at the expense of needed overall structure and flexibility. However, given the scarcity of financial and staff resources, the **TED** could benefit from a long-range plan that is consistent with the Code. The plan could set and help guide the priorities for future Code implementation.

6. Implementation of Code curriculum and education standards provisions has begun

Most of the implementation of the Code tribal education standards provisions has occurred in the Todd County School District. In 1997, Todd County finalized and adopted Lakota Studies Standards for grades kindergarten through twelve. The tribal education standards development process was a very collaborative effort among the District, the **TED**, and **SGU**. State and national standards were reviewed and then adapted to meet the needs of **RST** students. In the summer of 1998, Todd County began integrating the tribal Lakota Studies Standards into its regular curriculum. The **TED** and Todd County are currently working on the development of tribal Lakota Language Standards.

Work has also begun on the development of tribal Lakota Studies Standards for St. Francis Indian School and White River School District. The process by which the tribal standards for Todd County were developed and the benchmarks used there have proved to be a good model for work at other schools and educational institutions.

7. Impacts on staffing and teacher training have been made by initiatives, not by direct Code provision implementation

Lack of resources have greatly hindered the implementation of Code provisions regarding staffing and teacher training. In the late 1980s and early 1990s, the **TED** worked intensely with **SGU** to plan and develop tribal teacher recertification courses. Courses were designed in four areas: Indian Studies, Rosebud Lakota History and Culture, Teaching Methodology for Lakota Students, and Teaching the Exceptional Child in the Regular Classroom. The **TED** secured agreement from the South Dakota Department of Education that these courses would satisfy state teacher recertification requirements. However, tribal teacher recertification work has since laid dormant because no resources have been available to maintain it.

The **TED** nevertheless has made some impact on staffing and teacher training with initiatives such as the Lakota Language Renewal Project, by providing occasional in service training, and by working with individual schools and other educational institutions to establish tribal educational standards.

8. The Code parental and community involvement provisions have been implemented

The **TED** has developed Tribal Parenting Education Programs and provides in service training for parents in accordance with the Code. The **TED** has also participated in the development of School Improvement Councils at Todd County, St. Francis, and White River schools that are comprised primarily of tribal parents. It is not expected that compliance or enforcement of these Code provisions will be a problem in the future. However, this is a substantive area of the Code that could benefit from clarification with respect to enforcement or recourse if compliance became an issue in the future.

9. The Code provisions on alcohol and substance abuse prevention education have not been implemented

Virtually no implementation of Code provisions has occurred in this area due to a lack of resources. The **TED** has gathered and reviewed the alcohol and drug abuse prevention education policies of some schools and other educational institutions, and has identified the lack of testing and background checks for staff as an area of concern.

10. The Code lacks specific provisions regarding early childhood education

While "early childhood programs" are within the definition of "other educational institutions" regulated by the Code, there is no specific Code section on early childhood education. For several reasons this omission seems curious. Education and nurturing of children in their early years after birth is very much a part of Lakota tradition. The **RST** has

long operated a Head Start Program which, in 1998, received national recognition as one of the Top Ten Head Start Programs in the country. Significant resources have been obtained for tribal Infants and Toddlers with Disabilities Programs.

C. The TED and Code have Positively and Substantially Impacted Educational Opportunities for Tribal Students

Since enactment of the Code, the graduation rates for students in grades nine through twelve have increased at Todd County from 48% to 72% and at St. Francis from 24% to 69%. At the same time, the drop-out rates for students in these grades have decreased at Todd County from 11% to 7.6% and at St. Francis from 36.5% to 7%. Also during this same period, there have been modest improvements in the attendance rates for students in grades nine through twelve at both Todd County and St. Francis. This data is displayed by tables and graphs on the following pages in this Part of this evaluation.

While this data is not limited to tribal students, the percentages of tribal students in these schools are 90% (Todd County) and 99% (St. Francis). The **RST** has made a priority of addressing student attendance and the correlative drop-outs and graduations directly through the **TIP**. Indeed, the data shows that from 1989 to 1993, improvements in drop-out and graduation rates at Todd County and St. Francis were modest. Since the inception of the **TIP** in FY 1994, the changes have been substantial. Interviews with schools and other educational institutions for this evaluation confirmed that the **TIP** and other **TED** efforts have helped in this area. The data and interviews lead to the conclusion that these improvements in educational opportunities are attributable to **TED** operations and Code implementation.

D. The TED and Code have Not Impacted the Quality of Education for Tribal Students To Date

As shown by the tables and graphs on the following pages, since enactment of the Code, reported achievement scores for Todd County, St. Francis, and White River schools have changed little. This leads to a conclusion that the **TED** and Code have had virtually no impact on tribal student education quality. However, increases in attendance are necessary for improvements in achievement. Additionally, achievement is less subject to direct tribal control than attendance. Nevertheless, key sections of the Code such as tribal curricula and teacher training are aimed at improving achievement levels, but they have yet to be implemented. Todd County has only recently adopted and integrated tribal education standards in Lakota Studies. It is far too soon to conclude what impact the **TED** and Code could have on educational quality for tribal students if given the time and chance.

Todd County High School Student Performance Indicators 1989-1998					
Year	Drop-Out Rate	Attendance Rate	Graduation Rate	11 th Grade Achievement (NCE)	
				Reading	Math
1989-90	11%	89%	48%	42.5	43.0
1990-91	15%	87%	52%	37.0	40.0
1991-92	14%	88%	47%	39.0	39.0
1992-93	11%	81%	42%	32.0	29.0
1993-94	12%	89%	51%	37.0	31.0
1994-95	7.3%	90%	62%	40.0	43.0
1995-96	6%	91%	61%	39.2	42.8
1996-97	No Information On File				
1997-98	7.6%	97%	72%	40.5	39.7

Source: School Reported Data

St. Francis High School Student Performance Indicators 1989-1998					
Year	Drop-Out Rate	Attendance Rate	Graduation Rate	11 th Grade Achievement (NCE)	
				Reading	Math
1989-90	36.5%	72%	24%	18.0	19.0
1990-91	32%	67%	27%	26.1	30.9
1991-92	48%	74%	31%	29.5	31.9
1992-93	14.7%	79%	42%	23.0	20.0
1993-94	12.8%	77%	52%	32.7	28.9
1994-95	24.3%	74%	61%	36.5	47.1
1995-96	No Information On File	79%	67%	43.6	16.0
1996-97	No Information On File				
1997-98	7%	78%	69%	37.8	12.6

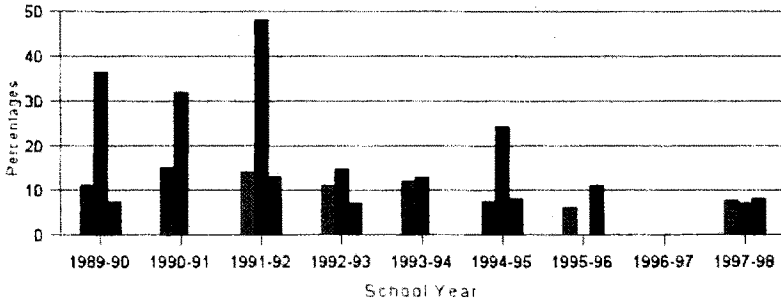
Source: School Reported Data

White River High School Student Performance Indicators 1989-1998					
Year	Drop-Out Rate	Attendance Rate	Graduation Rate	11 th Grade Achievement (NCE)	
				Reading	Math
1989-90	7.2%	95.5%	62%	43.0	40.0
1990-91	No Information On File				
1991-92	13%	94%	66%	No Information On File	
1992-93	7%	93%	74%	29.0	45.0
1993-94	No Information On File				
1994-95	8%	88%	61%	38.0	54.0
1995-96	11%	91.6%	54%	48.3	40.1
1996-97	No Information On File				
1997-98	8%	98%	64%	47.8	52.5

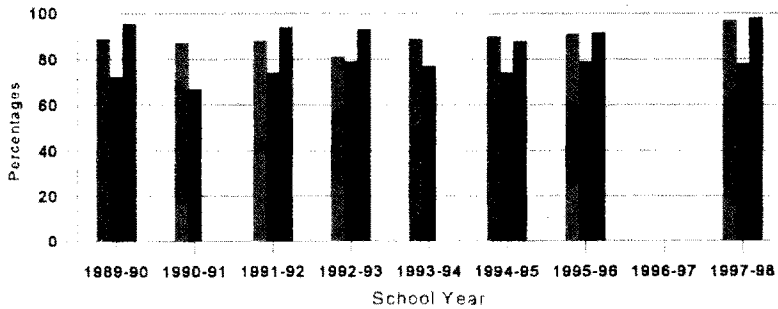
Source: School Reported Data

HIGH SCHOOL

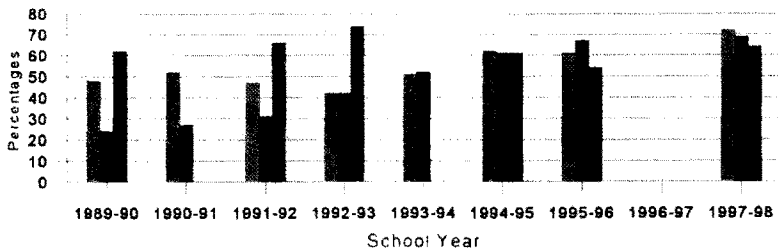
DROP-OUT RATES



ATTENDANCE RATES



GRADUATION RATES



Todd County



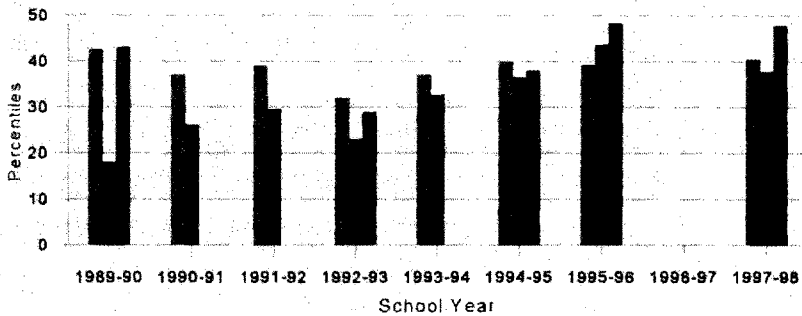
St. Francis



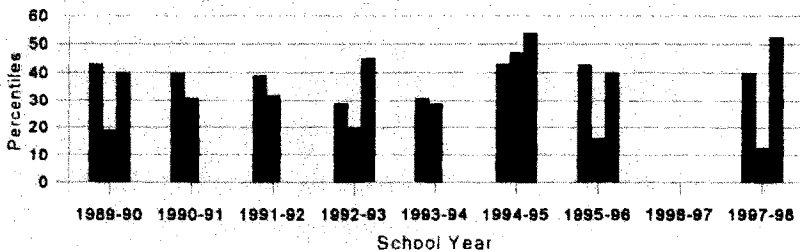
White River

11TH GRADE ACHIEVEMENT (NCE)

READING



MATH



Todd County
 St. Francis
 White River

VII. RECOMMENDATIONS

- A. The stable funding for core TED operations needs to increase so that Code implementation and student performance impacts can be expanded.**
- B. The TED should continue moving tribal gaming revenues into Code implementation-type expenditures such as language restoration.**
- C. Annual funding should be obtained for publishing the SRE report. Data from schools and other educational institutions should be standardized. All schools and other educational institutions should provide full data annually.**
- D. For direction and accountability, the TED should develop a long-range operations plan with goals, scheduled actions steps, and performance measures.**
- E. While continuing the present approach to Code implementation, the RST also should be prepared for break downs in cooperation and collaboration and legal challenges to tribal authority.**
- F. The RST should continue to obtain legal advice on questions regarding tribal jurisdiction in education and Code compliance mechanisms.**
- G. Education initiatives should be used as models for implementing Code provisions on tribal curricula and teacher recertification.**
- H. The RST should be prepared to enforce compliance with the Code parental and community involvement provisions if they are challenged by parents, schools, or other educational institutions.**
- I. The RST should take advantage of existing initiatives and funding for pre-school and related parenting programs by amending the Code to include a separate early childhood section.**
- J. The RST should implement the Code provisions on alcohol and substance abuse prevention education as resources become available, and amend the Code to require drug and alcohol testing and background checks for employees of schools and other educational institutions.**

- K. The RST should build on its demonstrated success in reducing tribal student drop-out rates and increasing attendance and graduation rates and begin efforts to increase student academic attainment and achievement levels.
- L. For future external monitoring and assessment, models, standards, and analyses for tribal education departments and codes should be developed, reviewed, and refined.

ROSEBUD SIOUX TRIBE TRIBAL EDUCATION DEPARTMENT FUNDING SOURCES (in thousands of dollars)										
	FY90	FY91	FY92	FY93	FY94	FY95	FY96	FY97	FY98	FY99
Tribal Revenues Unrestricted	\$ 30	\$ 93	\$ 75	\$ 67	\$ 67	\$ 67	\$ 67	\$ 67	\$ 72	\$ 78
Tribal Gaming Revenues*						\$250	\$390	\$130	\$225	\$167
General Indian Self-Determination Act Funds for Tribes ('638 - TPA)					\$ 33	\$ 62	\$ 79	\$100	\$113	\$113
Individuals with Disabilities Education Act Funds					\$ 7.6	\$167	\$372	\$497	\$680	\$947

* Restricted to clothing, scholarships, student travel, language restoration (FY98 & FY99), the Rosebud Alternative Program (FY99), graduation or school projects

APPENDIX

AMERICAN INDIAN HIGHER EDUCATION CONSORTIUM

Statement of the American Indian Tribal Colleges and University Presented to the United States Senate Committee on Indian Affairs November 15, 1999

I. INTRODUCTION

Mr. Chairman, Mr. Vice Chairman, Members of the Committee, and staff on behalf of this nation's 32 Tribal Colleges and Universities, which comprise the American Indian Higher Education Consortium (AIHEC), we thank you for the opportunity to share our thoughts and concerns regarding certain programs authorized in the Elementary and Secondary Education Act (ESEA).

Under this Act, we have two specific authorization requests.

A. Partnerships for Teacher Preparation: The American Indian Corps of Teachers (AICT) is a vibrant new program aimed at producing 1,000 new teachers for schools serving American Indian students. The program would provide monies for fellowships to college students majoring in education programs and for professional development programs to support current teachers in Indian Country. We believe that the Tribal Colleges, working in consort with degree awarding Colleges of Arts and Sciences, are the ideal catalysts for this initiative and therefore, we are seeking language in the reauthorization of ESEA specifying this initiative as a Tribal College program. We are also recommending that the AICT program be moved to the Office of Postsecondary Education within the Department of Education where other teacher preparation and training programs are currently housed.

B. Indian Adult Education: Tribal Colleges and Universities are the number one source of GED and anti-low literacy programs in their remote reservation communities. All of the Tribal Colleges offer programs to address this critical need, despite the fact that there is precious little funding available for these efforts. For this reason we request the inclusion of a new subpart within Title IX of ESEA that will create a Tribal College Adult Education program. This new subpart would authorize grants to support the further development of projects that will improve employment and educational, basic literacy and other opportunities to qualify for a high school diploma or its equivalent for adult Indians. As stated earlier, these programs currently exist at the Tribal Colleges and are serving the needs of their reservation communities. However, the current lack of funds for basic Adult Education programs is threatening the continuation of these programs. We recommend that the authorizing committees of the House and Senate move the administrative authority for this new program to the Department of Education's Office of Vocational and Adult Education.

II. JUSTIFICATION FOR PROGRAM CHANGES

Tribal Colleges currently serve more than 25,000 students each year, offering primarily two-year degrees, with some colleges offering four-year and graduate degrees. Together, the colleges represent the most significant development in American Indian education history, promoting achievement among students who may otherwise never know educational success. All of the

Tribal Colleges are fully accredited, with the exception of the four institutions that are candidates for accreditation.

Tribal Colleges remain the most poorly funded institutions of higher education in this country, despite our successes over the past 30 years. Although conditions at some have improved substantially, many of the colleges still operate in trailers, cast-off buildings and facilities with crumbling foundations, faulty wiring and leaking roofs. Our core funding, which is authorized under the Tribally-Controlled College or University Assistance Act of 1978 and funded through the Department of Interior appropriations bill, remains grossly inadequate. In fact, the Tribal Colleges' FY99 appropriation of \$2,964 per Indian student is dramatically less than the average per student revenue of mainstream two-year institutions and falls far short of the authorized funding level of \$6,000 per Indian student. The average non-Indian enrollment level at the Tribal Colleges is approximately 20 percent however, due to our location on Federal trust territory the states have no obligation to support the non-Indian students that attend the Tribal Colleges. In the few cases where the individual states have elected to support the non-Indian students attending a Tribal College the per-student funding level is a fraction of that awarded to mainstream community colleges for their student body.

Most of the Tribal Colleges currently offer education programs that are preparing students to teach in schools serving American Indian students and their communities. These teacher preparation programs emphasize the need to provide qualified Indian teachers to Indian Country and as a result they are providing role models and mentors for Indian students in the classroom. The Tribal College system encourages these new educators and provides them with a support system that promotes their professional development and performance excellence in the classroom. Since teacher preparation programs are already well established at many Tribal Colleges, authorizing the AICT program as a specific Tribal College program would facilitate the continuation of these programs in the most appropriate venue.

Further, other teacher preparation programs are housed in Department of Education's Office of Postsecondary Education (OPE) while the current authority for the AICT is within Office of Elementary and Secondary Education (OESE). We believe that this program should be moved to OPE so that the American Indian Corps of Teachers program can also be administered by the teacher preparation/training program experts.

An important component of every Tribal College's mission is to provide GED, basic remediation and literacy programming to its communities. These programs are the basis of the colleges' outreach and responsiveness to the needs of members their Tribes and surrounding communities. Tribal Colleges must divert already scarce resources from other projects to continue to offer these basic yet critical programs since funding for them is virtually nonexistent. These ongoing programs need and deserve adequate financial support. The proposed Tribal College Adult Education program in Title IX of ESEA, to be housed in OVAE, would give the appropriate area within the Department of Education the authority administer and support these much needed programs. This authorization would allow the Tribal Colleges to more thoroughly address the need for basic adult education in their communities. Access to education opportunities can easily translate into empowerment and a thirst for additional knowledge; this proposed language would establish that initial access.

On behalf of the AIHEC member institutions, thank you for this opportunity to express our recommendations on ESEA programs. We appreciate you Committee's long standing support of Tribal Colleges and we look forward to continuing to work with you to bring better education opportunities to all American Indian students, young and old.

Additionally, the Tribal Colleges are seeking modest changes to the language of the Higher Education Act's (HEA) Title III Part A Section 316 (Strengthening Tribal Colleges).

We are seeking three specific changes to the current language.

1. **To simplify a cumbersome and expensive application process** putting all Tribal Colleges, regardless of age, size, or level of development, on equal footing in their capacity to prepare competitive applications for vitally needed grants under § 316.
 - Section 316 makes available a small pool of funding, authorized at only \$10 million and is open to a very limited number of applicants; accredited Tribal Colleges and Universities, or about 30 institutions.
 - Tribal Colleges as a group are the youngest and least developed institutions of higher education in the nation. They are the most in need of, but least able to submit, competitive applications under the general Part A program.
 - Currently, many institutions of higher education spend upwards of \$20,000 on application preparation and submission. Applications submitted under both the general Part A program and § 316 currently must address no less than 16 areas, each of which must be individually judged by application reviewers. By simplifying the application process for §316 considerable administrative cost savings could also be achieved by the Federal Government.
2. **Direct the Secretary to ensure equitable distribution of funding** to the maximum number of Tribal Colleges possible, spreading the limited funding widely among the members of this small group.
 - Due to the fact that only about 30 eligible Tribal Colleges in the United States and because they are all severely under funded. American Indian students stand to benefit if funding is distributed in a manner that ensures that as many Tribal Colleges as possible are funded on a consistent basis.
 - Like Historically Black Colleges and Universities, which are not subject to either the wait-out period or competitive grant application cycles, the Tribal Colleges were conceived, established and are committed to serving the needs of historically underrepresented students of higher education, their families and their communities.
3. **Exempt Tribal Colleges' section 316 from the two-year wait out period** required under Title III Part A helping to ensure the opportunity for institutional development to the youngest poorest, and smallest group of institutions of higher education in the nation.
 - Title III of the Higher Education Act was created to expand education opportunities to disadvantaged and historically underrepresented groups and to help improve and expand the academic capacity of institutions specifically established and committed to serving these students. No other group of institutions embodies these goals more completely than this nation's Tribal Colleges and Universities.
 - Tribal Colleges are small institutions, in both size and number. There are only about 30 Tribal Colleges serving a combined total of about 25,000 students each year.
 - The 2 year wait-out period was enacted to help ensure that Title III funding reached the maximum number of students and institutions possible. Because the number of Tribal colleges is small and their need is great, the intended goal of the 2 year wait-out period would be best achieved by exempting section 316 from the provision and, instead directing the Secretary to distribute section 316 funding widely among the eligible institutions.

**Washoe Tribe of Nevada and California
Head Start Program
Proposal for a Demonstration Project for a
Washoe Language Immersion Head Start Center**

Introduction

The Washoe Tribe of Nevada and California is a federally recognized tribe organized under the Indian Reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and be responsible for the general welfare of its membership. Tribal history, however, extends an estimated 9,000 years in the Lake Tahoe Basin and adjacent east and west slopes and valleys of the Sierra Nevada range. Tribally controlled lands and four residential communities are now located in Douglas County and Carson City, Nevada, and Alpine County, California. Please see Attachment A for a map of tribal lands and Head Start Centers.

Total Tribal enrollment is currently 1,549, over two thirds of whom reside within the four reservation communities of Woodfords (Alpine County, CA), Dresslerville, (Douglas County, NV) Carson and Stewart (Carson City, NV). A majority of the remaining population lives in communities surrounding tribal lands.

Background

Since September 1996, the Washoe Tribe has been the grantee for our Head Start program, operating three centers in the communities of Dresslerville, Stewart and Woodfords. The program serves 17 children at each center for a maximum of 51 children served.

Concurrently to the operation of the Head Start Program, Washiw 'itlu Gawgayay 'In Washoe Speech Speak', a nonprofit community-based organization, has worked diligently to preserve and renew the Washiw ancestral language. Washiw is the spelling accepted by Washiw 'itlu Gawgayay.

They began in 1994 as a grass roots organization, achieved State of Nevada nonprofit status in May 1996, and became a federally recognized 501(c)3 organization in July 1997. Their Board of Directors is comprised of twelve Washoe tribal members, of who seven are elders and fluent speakers of the Washiw language.

In a 1994 tribal-wide language survey, just over 60 fluent speakers of the Washiw language were identified. Today, there are fewer than 50 fluent Washiw speakers who learned the language as their Mother Tongue. The Washiw language is an endangered indigenous language, no longer learned by infants in their homes. A Masters-Apprentice project conducted in 1995-1997 and their recent full Washiw immersion school experiences have fostered a rebirth of the Washiw language, with more people speaking Washiw to each other, having made great strides toward near fluency in the Washiw language.

The mission statement of Washiw 'itlu Gawgayay, drafted collectively on December 12, 1994 is as follows:

We are Washiw tribal members concerned with the perpetuation and renewal of our language. Our language is the essence/foundation/soul of our culture. Washiw is in danger of becoming lost in this generation. To prevent this language loss, we elders have taken the lead in making a rebirth of our language in our communities. This rebirth hinges on creating speakers by focusing on teaching our children and bringing all levels of speakers to fluency. We elders will contribute oral histories for the preservation of our language and plan to archive these histories for our descendants. In addition, we will share our experience with neighboring tribes who wish to begin a language renewal program.

Washiw Wagayay Mangal 'House Where Washiw is Spoken' is that independent preschool and elementary school, grades pre-8, run by Washiw 'itlu Gawgayay. There are currently six preschool children ages 3-5 enrolled in Washiw Wagayay Mangal.

Their curriculum is based on interdisciplinary collaboration. To date, students and teachers have met with Tribal Elders, Tribal Scholars, scientists, botanists, conservationists, archaeologists, linguists, educators and parents to build a bridge between indigenous education, solid academics, environmental science, and the preservation and renewal of the Washoe language and culture.

Language is the key to cultural survival. Because language exists in a social and cultural context, language is taught thematically. The language is learned by hearing it spoken fluently by the Elders who teach at the school, and in turn by the students as they begin speaking, singing, reading and writing in Washiw.

English is taught as a second language for one hour in an after-school program concentrating on reading readiness. Elementary aged students have the option of participating in the Tribal Title IX after-school tutoring program, using computers to build their Math and English skills from 3-5 p.m. Monday through Thursday.

Mathematics are taught in a program that parallels that of the public school's, with an emphasis on learning the metric system, as the Washiw numerical system is based on the decimal system. Basic skills are practiced daily, and they actively seek opportunities to use them outside the classroom.

Health, Science and Nutrition are taught with the goal in mind that students will develop skills and attitudes necessary for making wise decisions about the future. The child's natural curiosity and awareness are developed by studying the world around them: the human body, Washiw pharmacology, plant foods, trees, animals, birds, the importance of water to life on this planet, our solar system, and by learning about how the natural world is interrelated. They recycle school waste, have joined the environmentalists and conservationists at Lake Tahoe studying the degradation of water clarity there, and, most recently, have joined with them in their efforts to mitigate it.

History and Geography are taught in concentric circles from the student's ancestral culture outwards. This helps them understand their way of life and the evolution of the physical, historical, economic and human forces that have shaped their nation, the Americas and the rest of the world. Their perspective as descendents of people indigenous to this land is their starting point, not the Western European view that civilization was transplanted here. Both traditional and contemporary events are examined in this context.

Seasonal transhumance or the traditional movement of the Washiw people to hunt and gather seasonally is a vital part of our student's education. The students open school in September helping to plan and participate in T'a:gim Gumsabaye' 'pinenut harvest ceremonial gathering' of their people, and spend the final month of their school year Da'aw 'a:ga'a' 'at the edge of the Lake (Tahoe).' In this way, they become a part of living the seasonal cycle their ancestors once depended upon for survival, the school becomes a classroom without walls, and the focus on the traditional allows the Elder teachers to deepen their teaching of the language naturally.

Washiw legends remain a core focus of their curriculum development. These traditional stories are in danger of becoming lost if our students can no longer retell them in the Washiw language. Additionally, they are teaching the children ceremonial songs as they endeavor to keep the Washiw traditional culture alive and healthy. Their students have naturally become cultural ambassadors as they have produced and performed these legends in schools from South Lake Tahoe to Las Vegas to the University of Nevada, Reno, as well as before local school and community groups.

Please see Attachment B for a copy of their Recruitment/Publicity Packet.

Washoe Tribe of Nevada and California



October 25, 1999

Lynn Cutler
Special Assistant to Chief of Staff
Office of the President
West Wing
1600 Pennsylvania Avenue
Washington, DC 20008

Dear Lynn:

Hunga 'um hamu he:shi? *'How are you thinking, feeling, how is your heart?'*

I'm writing to you at this time to ask for your help on a particular legislative campaign that has been initiated by the People of Hawaii who are working to stabilize funding for indigenous immersion language schools nationally.

As you know, we are now turning the tide of the historical legacy of the policies that have shaped our children's education and have long measured them far below both the local and national averages by creating a school modeled on the successful Punana Leo schools in Hawaii. We have struggled to do this outside of the institutional barriers of the regular educational system and have found that it is not our children who are inherently flawed but instead the systems they have been subjected to before this. They are becoming ready learners, engaged in the curriculum, and they are growing proud and strong as they are nurtured by the Elder speakers and our new certified teacher, a tribal member who has just graduated from the University of New Mexico with a degree in elementary education. It is this wisdom from our Elders that make schools like ours successful across the nation and beyond.

The legislative initiative we are seeking support for is titled the Native American Language Education Act, and on October 19th a resolution supporting it was passed by the National Indian Education Association, titled the Native American Language Education Resolution. It will pave the way for the creation of avenues that will stabilize funding for community and tribally based immersion language schools that have made it through the critical period of founding such schools and who are now in constant fiscal crisis without a stable economic future. Foundation funding has enabled several of these schools to become established, but is not a long term solution to a stable economic future for these efforts.

919 Highway 395 South, Gardnerville, Nevada 89410
(702) 265-4191 • (702) 883-1446 • (916) 694-2339 • FAX (702) 265-6240

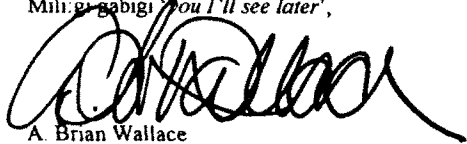
We are working with the founders of immersion language schools in Hawaii, in Montana among the Blackfeet, in Canada and New York among the Akwasasne, in Alaska among the Inupiak and Tlingit and in Wyoming among the Arapaho peoples. All of us share the same economic difficulties — and all of us are on the cutting edge of a last minute effort to save our respective languages: the vessel of culture--languages that are in danger of being lost forever otherwise. Finally, all of us are also faced with taking valuable time away from our curriculum development and teaching to raise funds to support our community schools.

Were we to continue to send our children to public schools, the government in our region provides approximately \$5,000 per child per year for their education. We need to access these funds and to redirect them to our own schools. We have discussed the creation of educational codes and the development of a tribally chartered school, but this too seems to take too much time away from the reason we do this work: to save our language and culture and to educate our children to the best of our collective abilities. As our Eldest Elders told us when we started this work in 1994: "You're a little late, aren't you?" Yes, we were out of time when we began to renew the language--and each time we return an Elder to the earth, we are reminded of all that we have the potential to lose and of the fact that we must continually work harder to save what we are able to comprehend in the short time that we have left to do so.

Please review the enclosed resolution, signed by the Elders and fluent speakers who are working in Washiw Wagayay Mangal '*House Where Washiw is Spoken*', written for presentation to the National Indian Education Association along with the NIEA Resolution Proposal we have also included here. I am then asking you to help support this initiative with a general letter of support from the White House — perhaps from the perspective outlined in the Presidential Executive Order on Indian Education dated August 6, 1998 — certainly the abysmal failure of the dominant culture's efforts to educate our children has been articulated by the President and his staff therein. We are trying to build support for an alternative that can be modeled elsewhere in indigenous communities. Please help us to move forward.

Thank you for your time and assistance with these urgent matters.

Mili:gi gabigi 'you I'll see later',



A. Brian Wallace
Chairman, The Washoe Tribe of Nevada and California

Enclosure

GALLUP-McKINLEY COUNTY PUBLIC SCHOOLS
GALLUP, NEW MEXICO 87305-1318

ROBERT GOMEZ
SUPERINTENDENT

ANGELO DiPAOLO
Assistant to the Superintendent

700 SOUTH BOARDMAN
P.O. BOX 1318
Telephone (505) 722-7711 Ext. 102
FAX (505) 722-4566

November 12, 1999

Senator Ben Nighthorse Campbell
United States Senate
Committee on Indian Affairs
Washington, D.C.

Dear Senator Campbell

I have been asked to respond to your letter of November 1, 1999 to Brent Gish, President of the National Indian Impacted School Association regarding testimony heard on October 27, 1999. Impacted School Districts in New Mexico wish to thank you and your committee for your concern regarding our Navajo children and their treatment in New Mexico.

In response to your questions, I offer the following response:

1. Legislation which offers a 50% match is of little help to Impacted School Districts that already are bonded to the 75% level. No other capital outlay funds are available to Impacted School Districts.
2. The State of New Mexico has been taking credit for 95% of all PL-874 funds during the past 25 years. Presently, 75% is still being retained by the states. Forty-seven states allow 100% of PL-874 funds to be retained by impact districts for educating their students. Only Alaska and Kansas retain a portion of Impact Aid, but these states also finance school construction. New Mexico contributes only lottery funds for school construction on a competitive basis. Testimony indicated two approaches, 1) ELIMINATE SECTION 8009, thus not allowing states to raid needy school districts with Native American children who live on Indian reservations or use the phrase federally connected children or military bases or 2) adopt the US Department of Education recommendation to not allow any state to equalize and take money from Impact Aid Districts unless they reach 80% of the national average of expenditures per child.
3. 25CFR Section 222.91 for Impact Aid states that an assurance that the LEA established Indian Policies and Procedures in consultation with and based on information from tribal officials and parents of Indian children residing on Indian lands who are Indian children.

"STUDENTS ARE OUR NUMBER ONE PRIORITY"

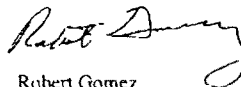
Senator Ben Nighthorse Campbell

2

November 12, 1999

4. Indian Policies and Procedures require each district to consult with tribes and involve parents in establishing priorities. The Gallup-McKinley Schools have a Title VIII parent advisory committee with representatives from each Navajo community Chapter House in the McKinley County. Three of the five district Board of Education members are from the Navajo Nation. The district administration consults with members of the Navajo Nation Education Division to discuss plans and uses of Impact Aid Funds
 - a. Indian Policies and Procedures are guidelines in requiring involvement and input into district use of funds affecting Indian students. Since almost all of the Gallup-McKinley County School advisory committees involve Navajo parents, decisions involve native American families. Almost 75% of the Gallup McKinley County School District's 14,500 students consists of Navajo students.
 - b. Parents and tribal officials are consulted about district needs, priorities and a needs assessment is completed to seek community input. Parent committees approve of expenditure priorities and recommend a budget plan to the district administration for recommendation to the Board of Education.
 - c. The advisory committee is made up of Navajo parents who advise budget plans for recommendation to the Board of Education. District administration meets annually with Navajo Nation Educational Committee to discuss their recommendations and receive input. Navajo Government officials represent four states and are represented by elected school board members and parent advisory committee on local educational matters. Parents have direct input and recommend expenditure of funds.
 - d. The school board has the final approval over school funding and approves plans and assessment data. LEA should continue to control these funds with input from their advisory committee.
5. In Indian Country, school district budgets include 40-60% monies attributable to PL-874 funds. Districts in New Mexico Impact Aid Districts are treated significantly worse than the other 47 states in our union and almost any other impacted school district.

Sincerely yours,

Robert Gomez
Superintendent



WIDE RUINS COMMUNITY SCHOOL

P. O. Box 309
Chambers, Arizona 86502
Phone: (520) 652-3251
Fax: (520) 652-3252

GOVERNING BOARD

President	Ronald Hale
Vice President	Laraine A. Lee
Secretary	Louise J. Nelson
Member	Henry Nelson
Executive Director	Albert A. Yazzie

MEMORANDUM

TO : Senate Committee on Indian Affairs
: Senator Ben Nighthorse Campbell, Chairman
: Senator Daniel K. Inouye, Ranking Member
: Members of the Committee

FROM : Ronald Hale, Board President
: Laraine A. Lee, Board Vice-President
: Louise J. Nelson, Board Secretary
: Henry A. Nelson, Board member

DATE : November 10, 1999

SUBJECT : (1) 1999-2000 Budget Requests
: (2) Reauthorization of the Elementary and Secondary Education Act (ESEA) Requests.

The Wide Ruins Community School (WRCS) Board would like to thank the entire Senate Committee on Indian Affairs for this opportunity to present some requests to the 1999-2000 Budget as well as requests to the reauthorization of ESEA. Wide Ruins Community School, Inc. is a Navajo Nation Non-Profit Corporation where principal offices and place of business are located at Wide Ruins, Navajo Nation, Arizona, and where principal function is to operate educational program to serve the residents of the Navajo Nation. Wide Ruins Community School operates Wide Ruins Community School as a Tribally Controlled School under the Tribally Controlled School Act P.L. 100-297, and, as such, receives federal funding under P.L. 95-561, which funding is commonly referred to as an ISEP (Indian School Equalization Program) grant, for the purpose of operating a kindergarten through sixth grade (K-6) educational program at Wide Ruins, Arizona. Wide Ruins Community School also operates Wide Ruins Community Junior High School (WRCJHS) under a Charter to granted to Wide Ruins Community School, under which WRCS receives State Aid from the State of Arizona for the purpose of operating a Junior High School for 7th and 8th grade programs at Wide Ruins, Arizona. WRCS has four School Board members elected by the following Navajo Nation Chapter Government: Wide Ruins Chapter, Klageetoh Chapter, Houck Chapter and Nahata' Dził Chapter.

Regarding the 1999-2000 Budget, WRCS Board requests the following budget levels:

1. Bureau of Indian Affairs Funding Fiscal Years 1996-2000 President Request.

School Operations

ISEP (formula)	\$329,000,000
ISEP (Prog. Adj)	\$ 708,000
Student Transportation	\$ 41,000,000
Early Childhood	\$ 7, 500,000
Facilities O&M	\$ 90,000,000
Administrative Cost Grant	\$ 50,000,000

Education Construction

Replacement School Const.	\$ 39,859,000
Employees Housing	\$ 3,000,000
Facilities I + R	\$ 46,212,000

Regarding the reauthorization of ESEA, Wide Ruins Community School requests the following items:

1. Unfunded Authorization Title

The Administration's proposal for the reauthorization of the ESEA makes several changes to Indian Education Programs. It eliminates all unfunded authorization. Wide Ruins Community School Board strongly opposes these eliminations.

2. Adult Education Program

The Adult Education program was funded for many years and clearly addressed a major need in the Indian Community. Wide Ruins Community School Board respectfully requests restoration of funds for the Indian adult education program at \$10 million dollars.

3. Gifted and Talented

The Gifted and Talented authority has been in effect since 1988 and federal officials have been reluctant to fund an outright Indian Specific program. Wide Ruins Community School Board operates Gifted and Talented programs for Indian students. To keep up with technology in the future, our students deserve the help that the gifted and talented provide.

4. Indian Technical Assistance Center

The 1994 reauthorization of ESEA eliminated six Indian Technical Assistance Centers (ITACs) which provided programmatic-based assistance to formula grantees nationwide. Wide Ruins Community School Board requests to restore

technical assistance centers to assist local grantees in meeting their educational goals.

5. Indian Education Executive Order

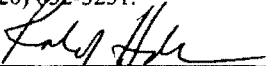
In August of 1998, President Clinton signed Executive Order 13096 on Indian Education. It has as its centerpiece initiating six goals that federal agencies should meet. In order to accomplish the Executive Order, Wide Ruins Community School Board requests keeping these programs with full funding in tact with ESEA: (1) Fellowship for Indian Students, (2) adult education, (3) Gifted and talented, (4) Support for Tribal

6. Title IX

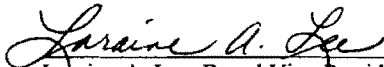
Title IX programs were unique in that the dollars appropriated were sent directly to the local education agency, bypassing state education agencies. By moving Title IX into Title I, the independent nature of Indian programs are assumed into a one-size-fits all approach. Wide Ruins Community School Board is strongly opposed to the incorporation of Indian Education into Title I. Wide Ruins Community School Board urges Congress to provide sufficient funding and reject elimination of current Indian Education authorizations.

CONCLUSION

The Wide Ruins Community School Board again thanks the Senate Committee on Indian Affairs for this input and respectfully request that these requests be included into the Congressional hearing records and implement the requests. If there are any question please contact Executive Director, Albert A. Yazzie at (520) 682-3251.

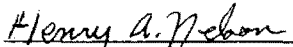


Ronald Hale, Board President



Lorraine A. Lee, Board Vice-President

Louise J. Nelson, Board Secretary



Henry A. Nelson, Board Member

cc: File